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Filing date: **10/01/2010**

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

Proceeding	92052698
Party	Plaintiff Internet Employment Linkage, Inc. d/b/a HigherEdJobs
Correspondence Address	ELIZABETH R. BURKHARD HOLLAND & KNIGHT LLP 10 ST JAMES AVE FL 11 BOSTON, MA 02116 UNITED STATES elizabeth.burkhard@hklaw.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Elizabeth R. Burkhard
Filer's e-mail	elizabeth.burkhard@hklaw.com
Signature	/Elizabeth Burkhard/
Date	10/01/2010
Attachments	HigherEdJobs Motion to Dismiss.pdf (12 pages)(64212 bytes) HigherJobsMotionExhibitA.pdf (5 pages)(127930 bytes) HigherJobsMotionExhibitB.pdf (5 pages)(133072 bytes) HigherJobsMotionExhibitC.pdf (11 pages)(3139878 bytes) HigherJobsMotionExhibitD.pdf (12 pages)(3472788 bytes)

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

Internet Employment Linkage, Inc. d/b/a
HigherEdJobs,
Petitioner and counterclaim defendant,
v.
AmeriCareers, LLC,
Registrant and counterclaim plaintiff.

Cancellation No. 92052698
Registration No. 3,666,461
Mark: HIGHER ED SPACE

**PETITIONER AND COUNTERCLAIM DEFENDANT’S MOTION TO DISMISS
REGISTRANT’S COUNTERCLAIM PETITION FOR CANCELLATION FOR
FAILURE TO STATE A CLAIM**

Petitioner and counterclaim defendant, Internet Employment Linkage, Inc. d/b/a HigherEdJobs (“HigherEdJobs”), moves to dismiss Registrant and counterclaim plaintiff, AmeriCareers, LLC’s (“AmeriCareers”) Counterclaim Petition For Cancellation (Docket No. 7, the “Counterclaim”) deficient and fatally flawed counterclaim for (i) failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, as applied by the Trademark Trial and Appeal Board (the “Board”) TBMP §503.01; and (ii) failure to state a cognizable claim for relief as required by Federal Rule of Civil Procedure 8(a) as applied by the TBMP §309.03(a).

FACTUAL SUMMARY

HigherEdJobs brought this action seeking cancellation of AmeriCareers’ HIGHER ED SPACE mark, US Reg. No. 3,666,461 (“the ‘461 Registration”) because the ‘461 Registration (i) is likely to cause confusion, mistake, and deception as to the source or origin of AmeriCareers’

services, (ii) will injure and damage HigherEdJobs and the goodwill and reputation symbolized by HigherEdJobs' marks, and (iii) was obtained in bad faith. (See Petition for Cancellation, Docket No. 1, ¶¶ 1-18.) HigherEdJobs owns the HIGHEREDJOBS.COM and HIGHEREDJOBS word and design marks listed below, which provide the bases for HigherEdJobs' claims:

- **HIGHEREDJOBS.COM**, U.S. Registration No. 2,688,003, registered February 18, 2003
- **HIGHEREDJOBS.COM (stylized)**, U.S. Registration No. 2,781,127, registered November 11, 2003,



- both for "personnel placement and recruitment services for academic professionals and faculty; providing access to data and the ability to manipulate data related to personnel placement and recruiting services, namely, employment candidate information, job finding tools, institutional profiles and job posting data for academic professionals and faculty; providing a website featuring information and weblinks in the field of employment for academic professionals and faculty," in class 35.
- HIGHEREDJOBS, US. App. Ser. No. 77/950,843, filed March 4, 2010
- HIGHEREDJOBS (stylized), US. App. Ser. No. 77/950,871, filed March 4, 2010



- both for "personnel placement and recruitment services for academic professionals and faculty; providing an on-line searchable database featuring data related to personnel placement and recruiting services, namely, employment candidate information, institutional profiles and job

posting data for academic professionals and faculty; providing a website featuring information and weblinks in the field of employment for academic professionals and faculty” in International Class 35; “on-line journals, namely, blogs featuring employment news and discussion” in International Class 41; and Providing temporary use of on-line nondownloadable software and applications for finding jobs for academic professionals and faculty, in class 42.

(See Petition for Cancellation, ¶¶ 1-2.)

In response to the Petition for Cancellation, AmeriCareers proffered a Counterclaim setting forth rambling alleged claims based upon conclusory allegations that the HIGHEREDJOBS.COM word and design marks (U.S. Registration No. 2,688,003 and 2,781,127, collectively referred to as “the HIGHEREDJOBS.COM Marks”) are descriptive without having acquired distinctiveness, and that the marks are generic. (See Counterclaim, ¶¶ 1-5.) AmeriCareers’ Counterclaim fails to set forth sufficient facts to support a claim upon which the Board may grant relief and pleads conclusions of law which are insufficient to state a claim that would require cancellation of HigherEdJobs’ HIGHEREDJOBS.COM Marks.

MOTION TO DISMISS LEGAL STANDARD

Pursuant to Rule 12(b)(6), the Board shall dismiss a petition for cancellation for “failure to state a claim upon which relief can be granted.” TBMP §503.01 (applying Rule 12(b)(6)). “A plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 555 (2007); see also *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009). *Twombly* also recognized that Rule 8(a)(2) “requires a ‘showing,’ rather than a blanket assertion, of entitlement to relief.” *Twombly*, 550 U.S. at 556, n. 3. The *Twombly* standard further requires that “the pleading must contain something more than a statement of facts that merely creates a suspicion of a legally cognizable right of action.” *Id.*, 550 U.S. at 555.

Though the Board must accept the factual allegations as true, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 129 S.Ct. at 1449. The Board must, therefore, identify the allegations in AmeriCareers’ Counterclaim that are mere conclusions which “are not entitled to the assumption of truth.” *Id.*, 129 S.Ct. at 1450. What remains must be “well-pleaded, nonconclusory factual allegations” in order to survive a motion to dismiss. *See id.*

ARGUMENT

I. THE COUNTERCLAIM FAILS TO STATE A CLAIM UPON WHICH THE BOARD CAN GRANT RELIEF

A. The HIGHEREDJOBS.COM Marks Cannot Be Challenged As Merely Descriptive Because They Are Incontestable

Once marks have been made incontestable - as the HIGHEREDJOBS.COM Marks have - the registrant’s right to use the marks in commerce is exclusive, and the registration may only be challenged on grounds narrowly defined in the Lanham Act. 15 U.S.C. §§ 1065, 1115(b); *see also* J. Thomas McCarthy, 3 *McCarthy on Trademarks and Unfair Competition* § 20:55 (4th ed. 2009). “Mere descriptiveness is not recognized by either § 15 or § 33(b) [of the Lanham Act] as a basis for challenging an incontestable mark.” *Park ‘N Fly v. Dollar Park and Fly, Inc.*, 469 U.S. 189, 196 (1985); *see* 15 U.S.C. §§ 1064, 1065, 1115.

Despite that clear law, AmeriCareers alleges that the HIGHEREDJOBS.COM Marks are merely descriptive and that they have not acquired distinctiveness. (*See* Counterclaim, ¶ 3.) But the HIGHEREDJOBS.COM Marks acquired distinctiveness through HigherEdJobs’ continuous and exclusive use of them in conjunction with the claimed services dating back to 1996. *See* Exhibits A and B, Declarations of Acquired Distinctiveness filed for the HIGHEREDJOBS.COM Marks. Additionally, the HIGHEREDJOBS.COM Marks are incontestable as they have each been registered on the Principle Register since 2003 – more than

five years – and Section 15 Declarations of Incontestability were filed for the HIGHEREDJOBS.COM Marks in 2008. *See* Exhibits C and D, Combined Declarations of Use and Incontestability Under Sections 8 & 15 for the HIGHEREDJOBS.COM Marks. Thus, mere descriptiveness is not a valid or available challenge to the registration of the HIGHEREDJOBS.COM Marks. Accordingly, AmeriCareers’ Counterclaim allegations that the HIGHEREDJOBS.COM Marks are descriptive fail to state a claim upon which relief can be granted.

B. The HIGHEREDJOBS.COM Design Mark Contains a Non-Generic Design Element and Cannot be Found Generic as a Whole

Section 14(3) allows a claim for cancellation on genericness grounds of an incontestable mark “only if it is alleged that the mark as a whole is generic.” *Montecash LLC v. Anzar Enterprises Inc.*, 95 USPQ2d 1060, 1063 (TTAB 2010)(citing *Finanz St. Honore, B.V. v. Johnson & Johnson*, 85 USPQ2d 1478 (TTAB 2007); *McCarthy on Trademarks and Unfair Competition* § 20:56). A mark that includes a design element cannot be generic as a whole if the design element is not generic. *See Montecash*, 95 USPQ2d at 1062-1063 (granting the respondent’s motion to dismiss petitioner’s request for cancellation of the MONTEPIO design mark in its entirety because the mark included a design element, which was not challenged as generic, and, thus, the mark could not be found generic as a whole).

AmeriCareers has broadly alleged that the HIGHEREDJOBS.COM Marks are generic. (Counterclaim, ¶¶ 1, 2, 4 and 5.) AmeriCareers makes no allegations regarding the design elements in the HIGHEREDJOBS.COM design mark. In fact, AmeriCareers’ Counterclaim completely disregards the fact that the HIGHEREDJOBS.COM design mark contains any design elements. As the HIGHEREDJOBS.COM design mark includes distinctive design elements, shown above, that have not been challenged by AmeriCareers, the HIGHEREDJOBS.COM

design mark cannot be found generic as a whole. *See Montecash*, 95 USPQ2d at 1062-1063.

Thus, for at least the HIGHEREDJOBS.COM design mark, the Counterclaim fails to state a claim for genericness upon which relief can be granted.

C. The Presence of the “.com” in the HIGHEREDJOBS.COM Marks Does Not Render the Marks Generic

In some instances, “the addition of a TLD [top level domain] indicator to a descriptive term operate[s] to create a distinctive mark.” *In re Steelbuilding.com*, 415 F.3d 1293, 1297 (Fed. Cir., 2005). In *In re Steelbuildings.com*, the Federal Circuit found that STEELBUILDINGS.COM was not generic, as the trademark applicant provided more than an online sales catalogue for steel buildings. *Id.* at 1298. “[T]he addition of the TLD can show Internet-related distinctiveness, intimating some ‘Internet feature’ of the item.” *Id.* at 1297.

AmeriCareers uses the presence of the “.com” in HIGHEREDJOBS.COM to allege that “[t]he addition of a generic or otherwise unregistrable term to a top level domain name, or the omission of spaces between words, has no trademark significance and does not render the term ‘HigherEdJobs.com’ registrable.” (Counterclaim, ¶ 4.) Here, however, as in *In re Steelbuildings.com*, HigherEdJobs provides more than just an online listing of higher education jobs: HigherEdJobs provide career resources such as resume and cover letter tips, salary surveys and cost of living comparisons, HigherEdJobs enables employers to post jobs and it provides recruitment tools for higher education employers. The presence of the “.com” in HIGHEREDJOBS.COM “expand[s] the meaning of the mark to include goods and services beyond” the posting of higher education opportunities. *In re Steelbuildings.com*, 415 F.3d at 1299 (finding that the .com top level domain expanded the mark to include internet services beyond “the mere sale of steel buildings”). Accordingly, AmeriCareers allegations of

genericness related to the presence of the “.com” in the HIGHEREDJOBS.COM Marks fails to state a claim upon which relief can be granted.

II. AMERICAREERS' ALLEGATIONS OF GENERICNESS ARE CONCLUSIONS LACKING THE FACTUAL SUPPORT REQUIRED BY RULE 8(A)

Fed. R. Civ. P. 8(a) obligates a movant to provide the factual grounds for its entitlement to relief. *See Twombly*, 550 U.S. at 555. Allegations that amount to “labels and conclusions” that are “couched as a factual allegation[s]” should be dismissed. *Id.* Where the allegations do not permit the Board “to infer more than the mere possibility of” a claim, the proponent “has alleged - but it has not ‘show[n]’ - that the pleader is entitled to relief.” *Iqbal*, 129 S.Ct. at 1950.

Although AmeriCareers’ allegations seek at length to apply the “generic” label to the HIGHEREDJOBS.COM Marks, the allegations provide no factual basis for a finding of genericness. Section 14 of the Lanham Act specifies that a mark may be cancelled at any time if “the registered mark becomes *the generic name for the goods or services*, or a portion thereof, for which it is registered...” 15 U.S.C. § 1064(3) (*emphasis added*). While AmeriCareers alleges that the phrase “higher ed jobs” “commonly refers to the category of jobs or the type of jobs in the field of higher education,” AmeriCareers has *not* alleged that “higher ed jobs” is the generic name for HigherEdJobs’ services: “personnel placement and recruitment services for academic professionals and faculty; providing access to data and the ability to manipulate data related to personnel placement and recruiting services, namely, employment candidate information, job finding tools, institutional profiles and job posting data for academic professionals and faculty; providing a website featuring information and weblinks in the field of employment for academic professionals and faculty.”

AmeriCareers’ allegations suggest that it has confused the legal concepts of “genericness” and “descriptiveness.” AmeriCareers’ allegations all focus upon the ability to

describe a particular type of jobs – not the ability to name an Internet-based service for posting employment opportunities in the field of higher education:

In other words, the term “higher ed jobs” commonly refers to the category of jobs or the type of jobs in the field of higher education. CC-Petitioner is or will be damaged by registration of the generic term “higher ed jobs” in that the prima facie effect of such registration impairs CC-Petitioner’s right to use the said generic term to categorize jobs in the field of higher education or to describe the related service and information.

(See Counterclaim, ¶ 1.)

Without using the term “higher ed jobs” or “higher education jobs”, it would be difficult to find an alternative term to exactly and precisely describe and categorize the type of jobs or job related information and services in the field of higher education.

(See Counterclaim, ¶ 2.) There is a legal distinction between “generic” terms and “merely descriptive” terms:

A generic term is one that refers to the *genus* of which the particular product is a species. . . . A ‘merely descriptive’ mark, in contrast, describes the *qualities or characteristics* of a good or service, and this type of mark may be registered only if the registrant shows that it has acquired secondary meaning, *i.e.* , it ‘has become distinctive of the applicant's goods in commerce.’”

See Henri's Food Products Inc. v. Tasty Snacks Inc., 817 F.2d 1303, 1306 (7th Cir. 1987)(quoting *Park ‘N Fly*, 469 U.S. at 193-194, with emphasis added); *see also In re Steelbuilding.com*, 415 F.3d at 1297 (“A mark is ‘merely descriptive’ if it ‘immediately conveys ... knowledge of the ingredients, qualities, or characteristics of the goods ... with which it is used.’”)(quoting *In re Gyulay*, 820 F.2d 1216, 1217 (Fed.Cir.1987)). Here, the term “higher ed jobs” describes a characteristic of the employment opportunities posted through HigherEdJobs’s services for academic professionals and faculty. Even if the term “higher ed jobs” is descriptive of an aspect

or characteristic of the claimed services,¹ the HIGHEREDJOBS.COM Marks acquired distinctiveness through HigherEdJobs' continuous and exclusive use in conjunction with the claimed services dating back to 1996 and are now incontestable, as discussed above. *See* Exhibits C and D, Declarations of Acquired Distinctiveness filed for the HIGHEREDJOBS.COM Marks. Registration of HIGHEREDJOBS.COM does not prevent AmeriCareers from using the phrases “higher ed jobs” or “higher education jobs”² in a non-trademark sense to describe or categorize employment opportunities in the field of higher education.³ Rather, the HIGHEREDJOBS.COM registrations enable HigherEdJobs to stop others from using HIGHEREDJOBS.COM and other confusingly similar terms *as trademarks* in conjunction with similar or related services.

Similarly, AmeriCareers alleges that HigherEdJobs’ use of the HIGHEREDJOBS.COM Marks is “not substantially exclusive”⁴ and that HigherEdJobs “allows so many others to use the terms ‘higher ed jobs’ and ‘higher education jobs’ without objection, which indicates that CC-Registrant acknowledges and accepts that anyone can use CC-Registrant’s alleged marks.” (*see* Counterclaim, ¶ 3.) However, HigherEdJobs very actively polices third party trademark use of

¹ For the sake of clarity, HigherEdJobs does not concede that the term "higher ed jobs" or any of HigherEdJobs' marks, including without limitation the HIGHEREDJOBS.COM Marks, are generic or merely descriptive as used by HigherEdJobs in conjunction with its services.

² AmeriCareers suggests throughout its Counterclaim that registration of the HIGHEREDJOBS.COM Marks in some way affects the ability of others to use the descriptive phrase “higher education jobs” or that use of this phrase by others implicates the HIGHEREDJOBS.COM Marks. Ironically, AmeriCareers states “higher education jobs” as an obvious alternative to “higher ed jobs” in the same breath as arguing that “it would be difficult to find an alternative term to exactly and precisely describe and categorize the type of jobs or job related information and services in the field of higher education.” (*See* Counterclaim, ¶ 2.) It is unclear from AmeriCareers’ Counterclaim what the legal basis is for these arguments.

³ A party whose “use of the name, term, or device charged to be an infringement is a use, otherwise than as a mark, ... of a term or device which is descriptive of and used fairly and in good faith only to describe the goods or services of such party, or their geographic origin ...” 15 U.S.C. § 1115(b)(4).

⁴ This argument fails, in and of itself, because under Section 33 of the Lanham Act, an incontestable registration is “conclusive evidence of . . . the registrant’s exclusive right to use the registered mark in commerce.” 15 U.S.C. § 1115(b).

potentially confusingly similar marks for similar or related services, as evidenced by the instant proceeding. Furthermore, AmeriCareers does not allege that such alleged third party use of “higher ed jobs” has been trademark use. As discussed above, registration of HIGHEREDJOBS.COM does not disable others from using the phrase “higher ed jobs” in a non-trademark sense to describe or categorize employment opportunities in the field of higher education. “This right to describe is the reason that descriptive terms qualify for registration as trademarks only after taking on secondary meaning as ‘distinctive of the applicant's goods,’ 15 U.S.C. § 1052(f), with the registrant getting an exclusive right not in the original, descriptive sense, but only in the secondary one associated with the markholder's goods.” *KP Permanent Make-up, Inc. v. Lasting Impression I, Inc., et al.*, 543 U.S. 111, 122 (2004). Such non-trademark use to describe employment opportunities does not make the HIGHEREDJOBS.COM Marks, or even the phrase “higher ed jobs,” generic for the claimed services. AmeriCareers allegations are inadequate to support a finding that “higher ed jobs” is or has become the generic name for HigherEdJobs services. *See Iqbal*, 129 S.Ct. at 1949.

Finally, AmeriCareers’ allegations that the HIGHEREDJOBS.COM Marks “do not function to identify CC-Registrant’s services and distinguish them from those offered by others” are conclusory and not supported by facts. (*See Counterclaim*, ¶ 3.) However, AmeriCareers has stated no facts to support the conclusion that the HIGHEREDJOBS.COM Marks no longer function as trademarks.⁵ Rather, AmeriCareers only makes additional conclusory allegations under a theme of descriptiveness, e.g., “the term ‘higher ed jobs’ or ‘higher education jobs’ only describes the category of the goods or service, does not identify the source of the goods and services.”(*See Counterclaim*, ¶ 3.) These and similar allegations are unsubstantiated, and

⁵ It is unclear whether AmeriCareers is attempting to argue that the HIGHEREDJOBS.COM Marks have been abandoned due to failure to prosecute infringers.

represent nothing more than bald conclusions stated as “facts.” *See Iqbal*, 129 S.Ct. at 1949 (complaint insufficient if it “tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’”).

Accordingly, the AmeriCareers’ conclusory allegations lack the specific facts needed to support its claims that the HIGHEREDJOBS.COM Marks are or have become generic and fail to satisfy the requirements of Rule 8(a).

CONCLUSION

The Counterclaim should be dismissed because it fails to state a claim upon which relief can be granted and it fails to adequately allege valid grounds for cancellation under Fed. R. Civ. P. 8(a).

Respectfully submitted,

**INTERNET EMPLOYMENT LINKAGE, INC.
D/B/A HIGHEREDJOBS**

Dated: October 1, 2010

By: /Elizabeth R. Burkhard/
R. David Donoghue
Scott Petersen
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Counsel for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this foregoing PETITIONER AND COUNTERCLAIM DEFENDANT'S MOTION TO DISMISS REGISTRANT'S COUNTERCLAIM PETITION FOR CANCELLATION FOR FAILURE TO STATE A CLAIM was served upon Registrant's correspondent of record, Dan Ouyang, AmeriCareers, LLC, 5000 Northwind Drive, Suite 218, East Lansing, Michigan 48823-5032, by First Class Mail, postage prepaid, on this 1st day of October, 2010.

/Elizabeth R. Burkhard/

#9764166_v1

EXHIBIT A

BARNES & THORNBURG

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August 2, 2002

VIA U.S. MAIL

Commissioner for Trademark
2900 Crystal Drive
Arlington, Virginia 22202-3513

Attn: BOX RESPONSE - NO FEE

Law Office: 115

Re: Mark: HIGHEREDJOBS.COM
Applicant: Internet Employment Linkage, Inc.
Serial Number: 76/235613
Attorney Docket No.: 31126/92887

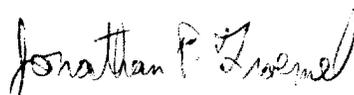
Dear Madam:

Enclosed please find the Response to Office Action mailed June 14, 2002. Please file this documentation and return the enclosed postcard date-stamped by the Patent and Trademark Office to our attention. If there are any fees of which we are not unaware, please charge deposit account No.10-0435(31126/92887).

Should you have any questions or comments regarding the enclosed, please call the undersigned representative.

Respectfully submitted,

BARNES & THORNBURG



Jonathan P. Froemel

JPF/dlp

Enclosures

cc: Mr. Andy Hibel (w/enclosures)

CHDS01 JWF 139124



BARNES & THORNBURG

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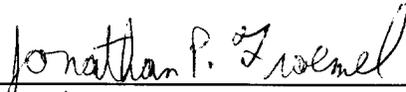
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Law Office: 115
Attorney Docket No.: 31126-92887
Applicant: Internet Employment Linkage, Inc.
Mark: HIGHEREDJOBS.COM
Serial No.: 76/235613
Filed: March 30, 2001
Examining Attorney: Howard P. Levine

Certificate Under 37 CFR 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 - Attn: Box Response-No Fee

on August 2, 2002


(Signature)

Jonathan P. Froemel

RESPONSE TO OFFICE ACTION

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513
ATTN: BOX RESPONSE - NO FEE

RESPONSE

In response to the Office Action mailed June 14, 2002, Applicant amends the application to seek registration under the Trademark Act Section 2(f), 15 U.S.C. Section 1052(f), based on acquired distinctiveness. The mark has become distinctive of the services through the Applicant's substantially exclusive and continuous use in commerce for at least five years immediately before the date of this statement.

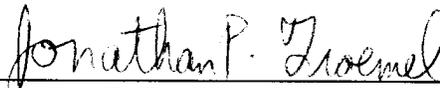
Applicant encloses its Declaration under 37 C.F.R. 2.20 in support of its Trademark Act Section 2(f) statement.

CONCLUSION

Applicant has amended the application to seek registration under Section 2(f). All matters in the Office Action having been addressed above, passage of this Application to publication is respectfully requested.

Should the Examining Attorney have any questions with regard to this Response, or to any matter relating to this application, a telephone call to the undersigned representative, at the telephone number listed below, would be greatly appreciated.

Respectfully submitted,



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312-357-1313
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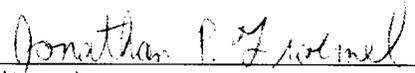
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Serial No: 76/235613
Filed: March 30, 2001
Examining Attorney: Howard B. Levine

Certificate Under 37 CFR 1.8(a)

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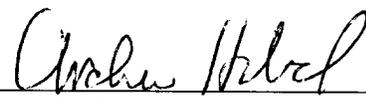
on August 2, 2002


(Signature)

Jonathan P. Froemel

DECLARATION UNDER 37 C.F.R. SECTION 2.20

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.


Andrew Hibel, Treasurer
Internet Employment Linkage, Inc.

Dated: 8/1/02

EXHIBIT B

BARNES & THORNBURG

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August 2, 2002

VIA U.S. MAIL

Commissioner for Trademark
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Arlington, Virginia 22202-3513

Attn: BOX RESPONSE - NO FEE

Law Office: 115

Re: Mark: HIGHEREDJOBS.COM AND DESIGN
Applicant: Internet Employment Linkage, Inc.
Serial Number: 76/235623
Attorney Docket No.: 31126/92886

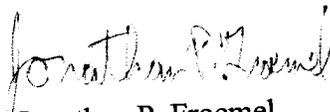
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Should you have any questions or comments regarding the enclosed, please call the undersigned representative.

Respectfully submitted,

BARNES & THORNBURG


Jonathan P. Froemel

JPF/dlp

Enclosures

cc: Mr. Andy Hibel (w/enclosures)

CHDS01 JWF 139131

BARNES & THORNBURG

2600 Chase Plaza
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Law Office: 115
Attorney Docket No.: 31126-92886
Applicant: Internet Employment Linkage, Inc.
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Examining Attorney: Howard P. Levine

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on August 2, 2002

Jonathan P. Froemel
(Signature)

Jonathan P. Froemel

RESPONSE TO OFFICE ACTION

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513
ATTN: BOX RESPONSE - NO FEE

AMENDMENT

In response to the Office Action mailed July 10, 2002, Applicant amends the application to seek registration under Trademark Act Section 2(f), 15 U.S.C. Section 1052(f), based on acquired distinctiveness. The mark has become distinctive of the services through the Applicant's substantially exclusive and continuous use in commerce for at least the five years immediately before the date of this statement.

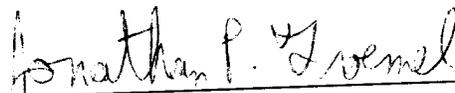
Applicant encloses its Declaration under 37 C.F.R. 2.20 in support of its Trademark Act Section 2(f) statement.

CONCLUSION

Applicant has amended the application to seek registration under Section 2(f). All matters in the Office Action having been addressed above, passage of this Application to publication is respectfully requested.

Should the Examining Attorney have any questions with regard to this Response, or to any matter relating to this application, a telephone call to the undersigned representative, at the telephone number listed below, would be greatly appreciated.

Respectfully submitted,



Jonathan P. Froemel
BARNES & THORNBURG
2600 Chase Plaza
10 South LaSalle Street
Chicago, Illinois 60603
312-357-1313
Attorneys for Applicant

CHDS01 JWF 139131

BARNES & THORNBURG

2600 Chase Plaza
10 South LaSalle Street
Chicago, Illinois 60603
(312) 357-1313

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Law Office: 115
Attorney Docket No.: 31126-92886
Applicant: Internet Employment Linkage, Inc.
Mark: HIGHEREDJOBS.COM AND DESIGN
Serial No.: 76/235623
Filed: March 30, 2001
Examining Attorney: Howard B. Levine

Certificate Under 37 CFR 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513

on August 2, 2002

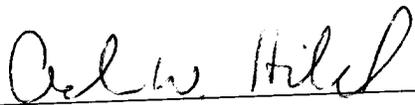
Jonathan P. Froemel

(Signature)

Jonathan P. Froemel

DECLARATION UNDER 37 C.F.R. SECTION 2.20

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.


 Andrew Hibel, Treasurer
 Internet Employment Linkage, Inc.

Dated: 8/1/02

EXHIBIT C

Combined Declaration of Use and Incontestability under Sections 8 & 15

The table below presents the data as entered.

Input Field	Entered
REGISTRATION NUMBER	2781127
REGISTRATION DATE	11/11/2003
SERIAL NUMBER	76235623
MARK SECTION	
MARK	HIGHEREDJOBS.COM (stylized and/or with design)
OWNER SECTION (current)	
NAME	INTERNET EMPLOYMENT LINKAGE, INC.
STREET	P.O. Box 06416
CITY	Chicago
STATE	Illinois
ZIP/POSTAL CODE	60606-0416
COUNTRY	United States
ATTORNEY SECTION (current)	
NAME	GRANT H. PETERS
FIRM NAME	BARNES & THORNBURG
STREET	PO BOX 2786
CITY	CHICAGO
STATE	Illinois
POSTAL CODE	60690-2786
COUNTRY	United States

ATTORNEY DOCKET NUMBER	4611 T 005
ATTORNEY SECTION(proposed)	
NAME	Jonathan P. Froemel
FIRM NAME	BARNES & THORNBURG LLP
STREET	PO BOX 2786
CITY	CHICAGO
STATE	Illinois
POSTAL CODE	60690-2786
COUNTRY	United States
PHONE	312-357-1313
FAX	312-759-5646
EMAIL	jfroemel@btlaw.com
AUTHORIZED TO COMMUNICATE VIA E-MAIL	Yes
ATTORNEY DOCKET NUMBER	31126-92886
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	035
GOODS OR SERVICES	KEEP ALL LISTED
SPECIMEN FILE NAME(S)	
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CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT5\IMAGEOUT5\762\356\76235623\xml1\8150004.JPG

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SPECIMEN DESCRIPTION	screen shot from website
PAYMENT SECTION	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	300
TOTAL FEE PAID	300
SIGNATURE SECTION	
SIGNATURE	/jonathan p. froemel/
SIGNATORY'S NAME	Jonathan P. Froemel
SIGNATORY'S POSITION	Attorney of record, state of Illinois bar member
DATE SIGNED	12/19/2008
PAYMENT METHOD	DA
FILING INFORMATION	
SUBMIT DATE	Fri Dec 19 16:55:38 EST 2008
TEAS STAMP	USPTO/S08N15-70.236.243.2 6-20081219165538958968-27 81127-40043b2ace9a388d522 c3768ceaed03d7e-DA-2434-2 0081219163346229610

Combined Declaration of Use and Incontestability under Sections 8 & 15

To the Commissioner for Trademarks:

REGISTRATION NUMBER: 2781127

REGISTRATION DATE: 11/11/2003

MARK: HIGHEREDJOBS.COM (stylized and/or with design)

The owner, INTERNET EMPLOYMENT LINKAGE, INC., having an address of
P.O. Box 06416
Chicago, Illinois 60606-0416
United States

is filing a Combined Declaration of Use and Incontestability under Sections 8 & 15.

For International Class 035, the mark is in use in commerce on or in connection with **all** of the goods or services listed in the existing registration for this specific class; **and** the mark has been continuously used in commerce for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still in use in commerce on or in connection with **all** goods or services listed in the existing registration for this class. Also, no final decision adverse to the owner's claim of ownership of such mark for those goods or services exists, or to the owner's right to register the same or to keep the same on the register; and, no proceeding involving said rights pending and not disposed of in either the U.S. Patent and Trademark Office or the courts exists.

The owner is submitting one specimen for this class showing the mark as used in commerce on or in connection with any item in this class, consisting of a(n) screen shot from website.

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The registrant hereby appoints Jonathan P. Froemel of BARNES & THORNBURG LLP
PO BOX 2786
CHICAGO, Illinois 60690-2786
United States

to file this Combined Declaration of Use and Incontestability under Sections 8 & 15 on behalf of the registrant. The attorney docket/reference number is 31126-92886.

A fee payment in the amount of \$300 will be submitted with the form, representing payment for 1 class(es), plus any additional grace period fee, if necessary.

Declaration

The owner, or its related company, is using the mark in commerce on or in connection with the goods and/or services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce. The owner, or its related company, has continuously used the mark in commerce on or in connection with the goods and/or services identified above, for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still using the mark in commerce on or in connection with the identified goods and/or services. There has been no final decision adverse to the owner's claim of ownership of such mark for such goods and/or services, or to the owner's right to register the same or to keep the same on the register; and there is no proceeding involving said rights pending and not disposed of either in the U.S. Patent and Trademark Office or in the courts.

The undersigned being hereby warned that willful false statements and the like 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 this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and 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: /jonathan p. froemel/ Date: 12/19/2008
Signatory's Name: Jonathan P. Froemel
Signatory's Position: Attorney of record, state of Illinois bar member

Mailing Address (**current**):
BARNES & THORNBURG
PO BOX 2786
CHICAGO, Illinois 60690-2786

Mailing Address (**proposed**):
BARNES & THORNBURG LLP
PO BOX 2786
CHICAGO, Illinois 60690-2786

Serial Number: 76235623
Internet Transmission Date: Fri Dec 19 16:55:38 EST 2008
TEAS Stamp: USPTO/S08N15-70.236.243.26-2008121916553
8958968-2781127-40043b2ace9a388d522c3768
ceaed03d7e-DA-2434-20081219163346229610

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Serial Number: 76235623



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Total Fees: \$300

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<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Number of Classes Paid</u>	<u>Total Fee</u>
§8 affidavit	7205	20081219	\$100	1	1	\$100
§15 affidavit	7208	20081219	\$200	1	1	\$200

Physical Location: 900 - FILE REPOSITORY (FRANCONIA)

Lost Case Flag: False

In TICRS (AM-FLG-IN-TICRS): True

Transaction Date: 20081219



EXHIBIT D

Combined Declaration of Use and Incontestability Under Sections 8 & 15

The table below presents the data as entered.

Input Field	Entered
REGISTRATION NUMBER	2688003
REGISTRATION DATE	02/18/2003
SERIAL NUMBER	76235613
MARK SECTION	
MARK	HIGHEREDJOBS.COM
OWNER SECTION (current)	
NAME	INTERNET EMPLOYMENT LINKAGE, INC.
STREET	P. O. Box 06416
CITY	Chicago
STATE	Illinois
ZIP/POSTAL CODE	60606-0416
COUNTRY	United States
OWNER SECTION (proposed)	
NAME	INTERNET EMPLOYMENT LINKAGE, INC.
STREET	1010 Lake Street
CITY	Oak Park
STATE	Illinois
ZIP/POSTAL CODE	60301
COUNTRY	United States
ATTORNEY SECTION (current)	

NAME	GRANT H PETERS
FIRM NAME	Barnes & Thornburg
STREET	P.O. Box 2786
CITY	Chicago
STATE	Illinois
POSTAL CODE	60690-2786
COUNTRY	United States
PHONE	312/357-1313
FAX	312/759-5646
EMAIL	mvallone@btlaw.com
ATTORNEY DOCKET NUMBER	31126/92887

ATTORNEY SECTION(proposed)

NAME	Jonathan P. Froemel
FIRM NAME	Barnes & Thornburg LLP
STREET	P.O. Box 2786
CITY	Chicago
STATE	Illinois
POSTAL CODE	60690-2786
COUNTRY	United States
PHONE	312/357-1313
FAX	312/759-5646
EMAIL	jfroemel@btlaw.com
AUTHORIZED TO COMMUNICATE VIA E-MAIL	Yes
ATTORNEY DOCKET NUMBER	31126/92887

GOODS AND/OR SERVICES SECTION

INTERNATIONAL CLASS	035
GOODS OR	

SERVICES	KEEP ALL LISTED
SPECIMEN FILE NAME(S)	
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	\\TICRS\EXPORT\IMAGEOUT\762\356\76235613\xml1\8150003.JPG
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PAYMENT SECTION	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	300
TOTAL FEE PAID	300
SIGNATURE SECTION	
SIGNATURE	/Jonathan P. Froemel/
SIGNATORY'S NAME	Jonathan P. Froemel
SIGNATORY'S POSITION	Attorney
DATE SIGNED	05/29/2008
PAYMENT METHOD	DA
FILING INFORMATION	
SUBMIT DATE	Thu May 29 14:58:04 EDT 2008

TEAS STAMP	USPTO/S08N15-70.236.243.2 6-20080529145804645460-26 88003-400d186dafdc0438746 3cfa7fd53f3bd6-DA-88-2008 0529095951142350
-------------------	--

PTO Form 1583 (Rev 5/2006)
OMB No. 0651-0055 (Exp 12/31/2011)

Combined Declaration of Use and Incontestability Under Sections 8 & 15 To the Commissioner for Trademarks:

REGISTRATION NUMBER: 2688003
REGISTRATION DATE: 02/18/2003

MARK: HIGHEREDJOBS.COM

The owner, INTERNET EMPLOYMENT LINKAGE, INC., having an address of
1010 Lake Street
Oak Park, Illinois 60301
United States

is filing a Combined Declaration of Use and Incontestability Under Sections 8 & 15.

For International Class 035, the mark is in use in commerce on or in connection with **all** of the goods or services listed in the existing registration for this specific class; **and** the mark has been continuously used in commerce for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still in use in commerce on or in connection with **all** goods or services listed in the existing registration for this class. Also, no final decision adverse to the owner's claim of ownership of such mark for those goods or services exists, or to the owner's right to register the same or to keep the same on the register; and, no proceeding involving said rights pending and not disposed of in either the U.S. Patent and Trademark Office or the courts exists.

The owner is submitting one specimen for this class showing the mark as used in commerce on or in connection with any item in this class, consisting of a(n) screen shots from website.

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Original PDF file:

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Converted PDF file(s) (2 pages)

Specimen File1

Specimen File2

The registrant hereby appoints Jonathan P. Froemel of Barnes & Thornburg LLP

P.O. Box 2786

Chicago, Illinois 60690-2786

United States

to file this Combined Declaration of Use and Incontestability Under Sections 8 & 15 on behalf of the registrant. The attorney docket/reference number is 31126/92887.

A fee payment in the amount of \$300 will be submitted with the form, representing payment for 1 class(es), plus any additional grace period fee, if necessary.

Declaration

The owner, or its related company, is using the mark in commerce on or in connection with the goods and/or services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce. The owner, or its related company, has continuously used the mark in commerce on or in connection with the goods and/or services identified above, for five (5) consecutive years after the date of registration, or the date of publication under Section 12(c), and is still using the mark in commerce on or in connection with the identified goods and/or services. There has been no final decision adverse to the owner's claim of ownership of such mark for such goods and/or services, or to the owner's right to register the same or to keep the same on the register; and there is no proceeding involving said rights pending and not disposed of either in the U.S. Patent and Trademark Office or in the courts.

The undersigned being hereby warned that willful false statements and the like 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 this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and 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: /Jonathan P. Froemel/ Date: 05/29/2008

Signatory's Name: Jonathan P. Froemel

Signatory's Position: Attorney

Mailing Address (current):

Barnes & Thornburg

P.O. Box 2786

Chicago, Illinois 60690-2786

Mailing Address (proposed):

Barnes & Thornburg LLP
P.O. Box 2786
Chicago, Illinois 60690-2786

Serial Number: 76235613
Internet Transmission Date: Thu May 29 14:58:04 EDT 2008
TEAS Stamp: USPTO/S08N15-70.236.243.26-2008052914580
4645460-2688003-400d186dafdc04387463cfa7
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RAM Accounting Date: 20080530

Total Fees: \$300

Note: Process in accordance with Post Registration Standard Operating Procedure (SOP)

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Number of Classes Paid</u>	<u>Total Fee</u>
§8 affidavit	7205	20080529	\$100	1	1	\$100
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Lost Case Flag: False

In TICRS (AM-FLG-IN-TICRS): True

Transaction Date: 20080529

