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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
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**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’S ANSWER TO AMENDED COUNTERCLAIM

Internet Employment Linkage, Inc. d/b/a HigherEdJobs (“Petitioner”), by and through counsel, states as follows in answer to the amended counterclaim (the “Counterclaim”) set forth in Paragraphs 1 through 4 of AMERICAREERS, LLC’S FIRST AMENDED COUNTERCLAIM PETITION TO CANCEL filed on October 18, 2010.

Petitioner answers the numbered paragraphs of the Counterclaim as follows:

1. In IELI’s Marks, “HigherEdJobs.com”, is generic as it consists primarily of the term “higher ed jobs”, which generically refers to Personnel placement and recruitment services for academic professionals and faculty and all associated services. In particular, “higher ed jobs”, or “higher education jobs”, is a common term used to name, describe or categorize the entire class of jobs in the field of higher education. When referred to a service, the term “higher ed jobs”, or “higher education jobs”, generically refers to employment, personnel recruitment, placement services, or related information and resources in the academic field. The term “higher

ed jobs” is widely used in the field for the above-mentioned services. Furthermore, the top-level domain (TLD) “.com” merely indicates an Internet address for use by commercial, for-profit organizations and, in general, adds no source identifying significance.

ANSWER:

Petitioner denies the allegations of paragraph 1.

2. AmeriCareers has been and will continue to be damaged by the continued existence of Registration No. 2,688,003 and Reg. No. 2781127 based upon the merely generic nature of the Registered Mark as applied to its services and IELI’s Cancellation Proceeding No. 92052698 filed against AmeriCareers based on these marks.

ANSWER:

Petitioner denies the allegations set forth in paragraph 2.

3. Based on the above, the trademark registration, Reg. No. 2688003, should be cancelled, pursuant to Section 14 of the Trademark Act. [15 U.S.C. §1064 (3)].

ANSWER:

Petitioner denies the allegations set forth in paragraph 3.

4. Based on the above, the trademark registration, Reg. No. 2781127, which contains both words and design should be cancelled due to the genericness of the word part of the mark for “HigherEdJobs.com”. In the alternative, the registration (Reg. No. 2781127) should be amended to insert a disclaimer of the term “HigherEdJobs.com”.

ANSWER:

Petitioner denies the allegations set forth in paragraph 4.

AFFIRMATIVE DEFENSES

1. The Counterclaim fails to state a claim upon which relief may be granted.
2. The Registrant's claims are barred by the equitable doctrine of laches, unclean hands, estoppel, and/or waiver. The Petitioner's HIGHEREDJOBS.COM trademarks have been in use since 1996 (the HIGHEREDJOBS.COM word mark, U.S. Reg. No. 2688003) and 1999 (the HIGHEREDJOBS.COM design mark, U.S. Reg. No. 2781127), and each registered in 2003. Registrant has been aware of Petitioner's HIGHEREDJOBS.COM trademarks and has been silent for years, never challenging the validity of Petitioner's HIGHEREDJOBS.COM trademarks despite various interactions between the parties over years of competition. Furthermore, Petitioner relied to its detriment upon Registrant's silence and acquiescence in the validity of its HIGHEREDJOBS.COM trademarks.
3. The cause of action set forth in the Counterclaim fails because the Petitioner's HIGHEREDJOBS.COM trademarks are not the generic name for Petitioner's services. Petitioner actively promotes their services using the HIGHEREDJOBS.COM trademarks and actively polices third party use that is confusingly similar or that could otherwise impair the value of the HIGHEREDJOBS.COM trademarks, as evidenced by the present action.
4. As a result of the nature and extent of Petitioner's use of the HIGHEREDJOBS.COM trademarks in the United States, the HIGHEREDJOBS.COM trademarks have become well and favorably recognized and famous as symbolizing the employment and recruiting-related services emanating from Petitioner.

WHEREFORE, Petitioner prays that Registrant's Counterclaim be dismissed and that
Petitioner's cancellation be sustained.

Respectfully submitted,

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

Dated: December 20, 2010

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this foregoing PETITIONER'S ANSWER TO AMENDED COUNTERCLAIM was served upon Registrant's counsel of record:

Jeffrey M. Furr
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by First Class Mail, postage prepaid, on this 20th day of December, 2010.

/Elizabeth R. Burkhard/