

ESTTA Tracking number: **ESTTA508720**

Filing date: **12/03/2012**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	MyTechHelp, LLC		
Entity	limited liability company	Citizenship	Florida
Address	5259 Coconut Creek Parkway Margate, FL 33063 UNITED STATES		

Attorney information	Gary S. Betensky Richman Greer, PA One Clearlake Centre, Suite 1504 250 Australian Avenue, South West Palm Beach, FL 33401 UNITED STATES gbetensky@richmangreer.com, cgottlieb@richmangreer.com Phone:5618033500
----------------------	--

Registrations Subject to Cancellation

Registration No	3348520	Registration date	12/04/2007
Registrant	Mytech Partners, Inc. Suite 415 333 Washington Avenue N Minneapolis, MN 55401 UNITED STATES		

Goods/Services Subject to Cancellation

Class 042. First Use: 2000/10/08 First Use In Commerce: 2000/10/08 All goods and services in the class are cancelled, namely: Computer and computer network consulting services; computer network administration services; computer management and monitoring services, namely, managing and monitoring computers, computer networks, and computer systems for technical purposes; website development and design services

Grounds for Cancellation

Genericness	Trademark Act section 23		
The mark is merely descriptive	Trademark Act section 2(e)(1)		
Registration No	2567520	Registration date	05/07/2002
Registrant	MYTECH PARTNERS, INC. 2420 Long Lake Road Roseville, MN 55113 UNITED STATES		

Goods/Services Subject to Cancellation

Class 042. First Use: 2000/10/08 First Use In Commerce: 2000/10/08 All goods and services in the class are cancelled, namely: computer and computer network consulting services
--

Grounds for Cancellation

Genericness	Trademark Act section 23
-------------	--------------------------

Attachments	Petition for Cancellation - MYTECH.PDF (7 pages)(253932 bytes)
-------------	---

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Gary S. Betensky/
Name	Gary S. Betensky
Date	12/03/2012

INTRODUCTION

1. The registrations for the marks MYTECH and MYTECH PARTNERS (collectively, “Challenged Registrations”) should be cancelled because the Registrant’s marks consist of matter that is generic. In addition, with regard to the mark MYTECH, registration should be cancelled because the subject mark is merely descriptive.

PARTIES

2. Petitioner is a limited liability company organized and existing under the laws of the State of Florida and has a principal place of business located at 5259 Coconut Creek Parkway, Margate, FL 33063.

3. Upon information and belief, and based on the information available through the USPTO database, Registrant is a corporation organized and existing under the laws of Minnesota and has a principal place of business located at 2420 Long Lake Road, Roseville, MN 55113.

PETITIONER’S STANDING

4. Petitioner owns and operates the domain name www.mytechhelp.com (“Website”), which it uses in connection with the promotion, marketing and advertising of its consumer-based technical support services as more fully described herein.

5. In connection with such services that Petitioner offers through its Website, it promotes such services under the trade name MyTechHelp (“MyTechHelp”).

6. MyTechHelp offers technical support services and troubleshooting to individual consumers relating to personal computers, PC-related components, hardware, software, printers, scanners, virus and SPAM security, iPods, MP3 players and other electronic devices (“Services”).

7. Petitioner is now using and will continue to use MyTechHelp and the Website in connection with the purpose of providing the Services.

8. On November 14, 2012, Registrant, through its counsel, threatened Petitioner with various actions premised on Petitioner's registration and use of the Website and Petitioner's use of the MyTechHelp trade name. In particular, Registrant has accused the Petitioner of, *inter alia*, infringing the Challenged Registrations.

9. If Registrant is permitted to retain the Challenged Registrations for which cancellation is hereby sought, thereby retaining *prima facie* exclusive rights to the descriptive and generic word "MyTech," Petitioner (who is currently damaged by such Challenged Registrations) would continue to be injured and damaged by the Challenged Registrations.

GROUND FOR CANCELLATION

10. The word "my" is a singular possessive pronoun used by a speaker when referring to himself or herself, as defined by Merriam-Webster online dictionary.

11. The word "tech" is a common abbreviation for a "technician" (since approximately 1942), "technology" (since approximately 1972), "technical," "technically," and/or "technological", as defined by Merriam-Webster online dictionary.

COUNT I REGISTRANT'S REGISTRATION FOR MYTECH SHOULD BE CANCELLED AS THE TERM "MYTECH" IS MERELY DESCRIPTIVE 15 U.S.C. § 1052(e)

12. Petitioner repeats and re-alleges the allegations above as if fully set forth herein.

13. Registrant's use and registration of the service mark MYTECH is highly descriptive of the technical and technology-related services rendered by the Registrant.

14. Registrant's use and registration of the service mark MYTECH is not unique or distinctive, but is rather consistent with the substantial third party uses and common understanding of the term.

15. In fact, the mark MYTECH conveys an immediate idea of the qualities and characteristics of Registrant's services, and the term is thus merely descriptive.

16. Consumers do not associate the mark MYTECH with a single source, and the mark has not acquired secondary meaning.

17. On information and belief, the term "MyTech" is included in a substantial amount of trade names of entities operating the same or similar services as that of the Registrant, such as (without limitation and only by way of example):

a. My Tech Communications with a domain name www.igotmytech.com using the trade name MyTech;

b. MyTech Security Systems with a domain name www.mytechsecurity.com using the trade name MyTech Security Systems;

c. My Tech Team with a domain name www.mytechtteam.net using the trade name MyTechTeam;

d. Mytech US with a domain name www.mytechus.com using the trade name Mytech; and

e. MyTech, Inc. with a domain name www.mytechinc.com using the trade name MyTech.

18. The term "My Tech" has long been used in the computer and computer-related industry in connection with services relating to, among other things, online, in-person and remote technical support, troubleshooting and consulting.

19. Further, on information and belief, the term “My Tech” is included in a substantial amount of advertising by entities offering the same or similar services as that of the Registrant, such as (without limitation and only by way of example):

a. Cisco, Inc. with a domain name http://www.cisco.com/en/US/support/tsd_my_tech_support.html using the descriptive phrase “My Tech Support;” and

b. Ferris State University with a domain name <http://www.ferris.edu/techsupport/> using the descriptive phrase “My Tech Support.”

20. The term “MyTech” has been a descriptive term used in connection with computer technical support and a subject of interest relating to computer technical support services since long before Registrant’s application for MYTECH and/or its registration of MYTECH.

21. Accordingly, Registrant’s service mark MYTECH is descriptive of the services recited in the Registration, and thus the Registration should be cancelled pursuant to 15 U.S.C. §§ 1052(e) and 1064.

COUNT II
REGISTRANT’S REGISTRATIONS FOR MYTECH AND MYTECH PARTNERS
SHOULD BE CANCELLED AS THE TERM “MYTECH”
IS GENERIC
15 U.S.C. § 1064(3)

22. Petitioner repeats and re-alleges the allegations above as if fully set forth herein.

23. Registrant is not entitled to the exclusive use of the term “MyTech” in commerce for the services specified in the Challenged Registrations.

24. The general public would not understand or believe that computer and computer network and technical services offered in connection with the term “MyTech” refer to the Registrant.

25. The term “MyTech” is generic for “technician,” “technology,” “technical,” “technically,” and/or “technological” services provided and/or rendered by an individual or entity, and therefore generic as used with regard to the computer and computer network technical services provided and/or rendered by the Registrant.

26. The term “MyTech” is necessary to accurately describe the subject matter of Petitioner’s and other third parties’ technical support and computer-related services.

27. Petitioner and other third parties have the right to use the term “MyTech” in connection with technical support and computer-related services.

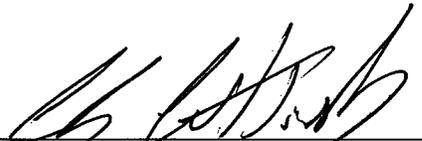
28. If Registrant is allowed to continue to maintain the Challenged Registrations, Registrant would be able to continue to improperly obstruct Petitioner as well as other third parties’ use of the generic terms.

29. Because the term “MyTech” is incapable of serving as an indicator of source, the Challenged Registrations should be cancelled.

WHEREFORE, Petitioner, MYTECHHELP, LLC respectfully requests that the Board cancel Registration No. 3,348,520 and Registration No. 2,567,520, and that the Board grant such other relief as it deems just and proper.

Dated: December 3, 2012

RICHMAN GREER, P.A.

By: 

Gary S. Betensky
Fla. Bar. No. 0434302
Chad J. Gottlieb
Fla. Bar No. 0064838
250 Australian Ave. South, Ste. 1504
West Palm Beach, Florida 33401
Telephone: (561) 803-3500
Facsimile: (561) 820-1608
**ATTORNEYS FOR PETITIONER
MYTECHHELP, LLC**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing is being served by delivering a true and correct copy of same via First Class Mail delivery to Registrant and counsel for the Registrant on December 3, 2012 at: MyTech Partners, Inc., 2420 Long Lake Road, Roseville, Minnesota 55113, and Paige A. Kitzinger, Esq., Clark Hill PLC, counsel for Registrant, 150 North Michigan Avenue, Suite 2700, Chicago, Illinois 60601.

By: 

Chad J. Gottlieb