

ESTTA Tracking number: **ESTTA217274**

Filing date: **06/12/2008**

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

Proceeding	92049001
Party	Plaintiff Scott R. Smith
Correspondence Address	Scott R. Smith 5714 Folsom Blvd. Suite 140 Sacramento, CA 95819 UNITED STATES scott@bizstarz.com
Submission	Opposition/Response to Motion
Filer's Name	Scott Smith
Filer's e-mail	scott@bizstarz.com
Signature	/Scott Smith/
Date	06/12/2008
Attachments	<p>Proof of Service, Finkelstein.pdf (1 page)(29266 bytes) Decl. by Smith, Ent. Expo.pdf (4 pages)(74829 bytes) Ex. A-Entrep. of the Yr, May97.pdf (2 pages)(164302 bytes) Ex. AA-E-Source ads-Jan04.pdf (2 pages)(261967 bytes) Ex. B-EMI '08 EOY, B-Wire.pdf (2 pages)(107021 bytes) Ex. C-LA Times Revel Aug 1, 86.pdf (4 pages)(289246 bytes) Ex. D-Entrep. Expo '03.pdf (1 page)(105438 bytes) Ex. E-Ent Expo ad by EMI, '93.pdf (1 page)(395133 bytes) Ex. F-Indy Bus. Jrnl, Apr01.pdf (2 pages)(98444 bytes) Ex. G-Mann testimony.pdf (4 pages)(441712 bytes) Ex. H-Shea Depo.pdf (2 pages)(51422 bytes) Ex. I-Entrepreneur marks, PTO.pdf (10 pages)(855867 bytes) Ex. J-EntrepreneursTV ltr.pdf (2 pages)(385413 bytes) Ex. L-District Court, E use.pdf (1 page)(144150 bytes) Ex. N-Trial Closing, Apr03.pdf (10 pages)(210912 bytes) Ex. O-Salmon ban, SFChron.pdf (4 pages)(57329 bytes) Ex. P-Tradeshows, EMI, Feb07.pdf (2 pages)(145456 bytes) Ex. Q-Bissell ltr to Smith.pdf (2 pages)(170673 bytes) Ex. R-EMI v Stardock discovery.pdf (3 pages)(269013 bytes) Ex. S-Lesonsky testimony.pdf (5 pages)(552010 bytes) Ex. T-Shea Depo.pdf (1 page)(50026 bytes) Ex. U-EXPO mag, Apr24,08.pdf (1 page)(227762 bytes) Ex. V-Brand Name Bullies.pdf (4 pages)(750103 bytes) Ex. X-SacBee, Apr15,00.pdf (2 pages)(79543 bytes) Ex. Y-Franchise 500 list, Dec07.pdf (1 page)(116450 bytes) Ex. Z-LA Times, EMI, Oct00.pdf (1 page)(90195 bytes) Ex. BB-Lesonsky testimony.pdf (7 pages)(435739 bytes)</p>

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PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing:

**OPPOSER'S RESPONSE TO
ENTREPRENEUR MEDIA, INC.'S MOTION TO DISMISS**

has been served on Mark A. Finkelstein by mailing said copy on **June 11, 2008** via First Class Mail, postage prepaid to:

Mark A. Finkelstein
Latham & Watkins
650 Town Center Dr, 20th floor
Costa Mesa, CA 92626-1925

Executed on **June 11, 2008**, at Sacramento, California



Scott R. Smith

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

Scott R. Smith,)	Cancellation No. 92049001
an individual and citizen of the UNITED STATES,)	
Petitioner,)	
)	
V.)	
)	
Entrepreneur Media, Inc.,)	
a California corporation,)	
Registrant.)	

**DECLARATION OF SCOTT R. SMITH IN OPPOSITION TO
ENTREPRENEUR MEDIA INC.'S MOTION TO DISMISS**

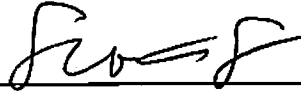
I, Scott R. Smith, hereby declare:

1. He makes this declaration based on his own knowledge, and on information and belief, and if called as a witness, he could and would competently testify thereto.
2. He is the petitioner in the cancellation proceeding.
3. He is an "entrepreneur" who provides services for small businesses and "entrepreneurs".
4. True and correct copy of EMI's letter to Ernst & Young is attached hereto as Exhibit A.
5. True and correct copy of Entrepreneur's Source ad from Entrepreneur magazine is attached hereto as Exhibit AA.
6. True and correct copy of EMI's Entrepreneur of the Year awards press release is attached hereto as Exhibit B.

7. True and correct copies of Rieva Lesonsky trial testimony is attached hereto as Exhibit BB.
8. True and correct copy of Los Angeles Times article is attached hereto as Exhibit C.
9. True and correct copy of Entrepreneur magazine section from November 2003 is attached hereto as Exhibit D.
10. True and correct copy of EMI's Entrepreneur Expo ad is attached hereto as Exhibit E.
11. True and correct copy of Indianapolis Business Journal article is attached hereto as Exhibit F.
12. True and correct copies of Dr. Virginia Mann's testimony is attached hereto as Exhibit G.
13. True and correct copies of Peter Shea's deposition testimony is attached hereto as Exhibit H.
14. True and correct copies of USPTO TESS search for "ENTREPRENEUR" marks is attached hereto as Exhibit I.
15. True and correct copy of EMI's cease and desist letter to EntrepreneursTV.com is attached hereto as Exhibit J.
16. True and correct copy of district judge commentary is attached hereto as Exhibit L.
17. True and correct copies of Smith's closing argument for EMI v. Smith is attached hereto as Exhibit N.

18. True and correct copy of San Francisco Chronicle article is attached hereto as Exhibit O.
19. True and correct copy of Entrepreneur magazine trade show article is attached hereto as Exhibit P.
20. True and correct copy of Henry Bissell letter is attached hereto as Exhibit Q.
21. True and correct copies of EMI discovery responses to Stardock is attached hereto as Exhibit R.
22. True and correct copies of Rieva Lesonsky trial testimony is attached hereto as Exhibit S.
23. True and correct copy of Peter Shea deposition testimony is attached hereto as Exhibit T.
24. True and correct copy of EXPO magazine ENTREPRENEUR EXPO article is attached hereto as Exhibit U.
25. True and correct copies of Brand Name Bullies book is attached hereto as Exhibit V.
26. True and correct copy of Sacramento Bee article is attached hereto as Exhibit X.
27. True and correct copy of EMI Franchise 500 press release is attached hereto as Exhibit Y.
28. True and correct copy of Los Angeles Times article is attached hereto as Exhibit Z.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed on June 11, 2008, at Sacramento, California.

A handwritten signature in black ink, appearing to read "Scott R. Smith", written over a horizontal line.

Scott R. Smith

May 7, 1997

Ms. Nancy Clark
Administrative Assistant to
Greg Ericsson
ERNST & YOUNG
2121 San Jacinto Blvd., Suite 500
Dallas, Texas 75201

Re: Trademark Infringement
(Entrepreneur Media, Inc.)

Dear Ms. Clark:

This follows our recent telephone conversation concerning the magazine called "Entrepreneur of the Year Magazine" which Ernst & Young has begun publishing. As I told you, I represent Entrepreneur Media, Inc., the publisher of ENTREPRENEUR Magazine. My client has become aware of this new magazine and has asked me to express its objections.

Enclosed herewith is a copy of United States Trademark Reg. No. 1,453,968 showing registration on the Principal Register of the mark ENTREPRENEUR for computer programs in International Class 9 and for paper goods and printed matter, namely magazines, books and published reports in Class 16. As indicated in the registration, the mark has been registered since 1987 and used with respect to the goods in Class 16 since 1978.

Your company's publication of "Entrepreneur of the Year Magazine" raises a serious likelihood of confusion with respect to my client's mark which is registered for the same goods. Your use of the term ENTREPRENEUR in the trademark sense conflicts with my client's rights and is likely to cause consumer confusion as to source.

We are aware of trademark Reg. No. 1,587,164 of your predecessor, Arthur Young & Company, for the service mark "Entrepreneur of the Year" in International Class 41 for conducting an annual awards ceremony commemorating the recipient's exceptional achievement in

Exhibit A

0457

Ms. Nancy Clark

May 7, 1997

Page 2

entrepreneurial business achievements. However, that does not give Ernst & Young the right to expand into the publication field with its "first time ever magazine", starting up a trademark use where none existed before.

We demand, therefore, that Ernst & Young cease and desist from any further use of my client's mark ENTREPRENEUR in the trademark sense on any magazine or other publication which would constitute goods within International Class 16. I am sure you will understand why it is necessary for my client to take this position. Its mark ENTREPRENEUR is a valuable mark and it cannot afford to let latecomers encroach on its area of protected trademark rights.

It is not clear in the letter that was sent to Ms. Riva Lesonsky announcing your new magazine whether or not there were plans to publish anything other than annual issues. If not, Ernst & Young will have adequate time to select a different title for its magazine and thereby avoid further trademark infringement.

Please provide me with your reply to this letter at your earliest convenience, not later than ten days from date.

Very truly yours,

Henry M. Bissell

HMB/ac
Enclosure

cc: Ronald L. Young, Esq. (w/enclosure)

Exhibit A

0458

Few franchises offer the lifestyle rewards that we do.

Scott Smith v. Entrepreneur Media, Inc., Cancellation #92049001, Mark: ENTREPRENEUR EXPO

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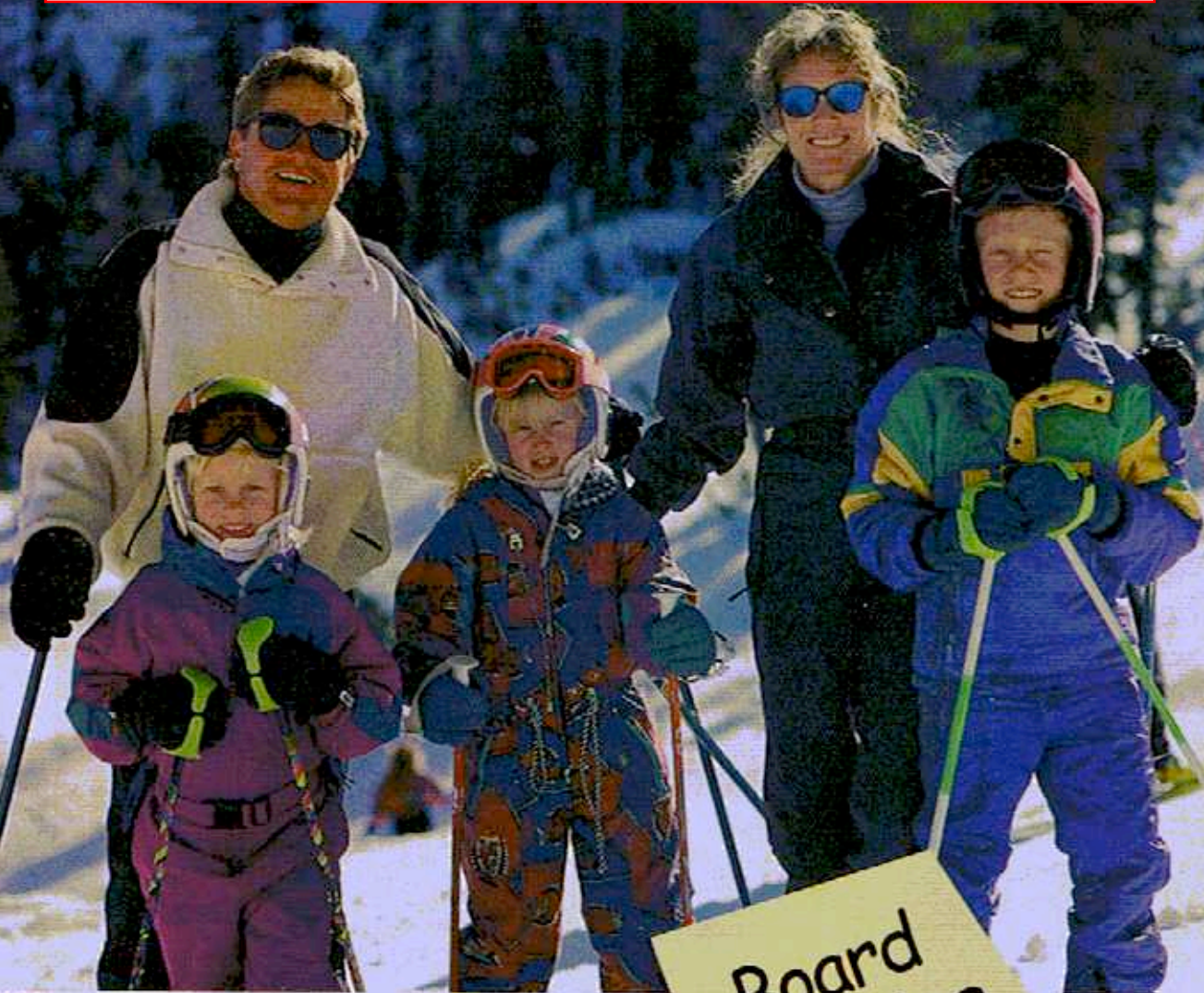
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Exhibit AA





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Exhibit AA

AOL Keywords: Franchise Match and Franchise Search



Published: Mar 10, 2008 01:14 PM

Modified: Mar 10, 2008 01:14 PM

America to Name Nation's Top Entrepreneur

Entrepreneur Magazine and The UPS Store Announce Contest For Most Successful Business Pioneers

IRVINE, Calif. - Entrepreneur magazine and The UPS Store today launched the "Entrepreneur of the Year" contest. Nationwide, the business community is being called upon to find those who best exemplify the entrepreneurial spirit.

"Without entrepreneurs, there would be no business community; these are the people who represent 99.7 percent of all employers," said Rieva Lesonsky, director of Entrepreneur magazine. "Their passion fuels America's economy. This contest is truly a unique opportunity for entrepreneurs to celebrate their own."

Eligible business owners are invited to submit an online entry at the contest's Web site, www.entrepreneur.com/eoy. Nominations will be accepted through June 30, 2008. Businesses with no more than 100 employees and gross sales revenue of at least \$3 million in 2007 will qualify for the "Entrepreneur of the Year" award. "Emerging Entrepreneur of the Year" is open to companies that have been in business for less than five years with less than five employees and which posted at least \$500,000 in gross sales revenue for 2007.

An expert panel of judges will choose the finalists, including representatives from Entrepreneur's editorial department and Mail Boxes Etc., Inc. (MBE), the franchisor of The UPS Store, along with Entrepreneur columnist Robert Kiyosaki ("Rich Dad, Poor Dad"). The panel's decision will be based on several criteria, including business growth in terms of number of employees and annual gross sales revenue as well as impact on an industry, the community, employees and customers.

Once finalists are chosen, the public will select its winners by an online vote at www.entrepreneur.com/eoy. Voting will take place from July 21 to Aug. 20.

"The UPS Store franchisees are entrepreneurs and small-business owners, so it's our privilege to acknowledge peers who have created and sustained their own successful business endeavors," said Stuart Mathis, president of MBE. "Many of our customers are everyday entrepreneurs and small-business owners; we make it our goal to help see their businesses grow and succeed."

The two winning business leaders will be profiled in the December 2008 issue of Entrepreneur magazine and honored at an awards luncheon and ceremony in December 2008 in Long Beach, Calif. Additionally, the winners will receive two roundtrip tickets to anywhere in the United States, a gift certificate for free services at The UPS Store, a three-year subscription to Entrepreneur magazine, and a selection of Entrepreneur Press books.

For complete rules and regulations for Entrepreneur(R) magazine's 2008 Entrepreneur of The Year Contest Presented by The UPS Store(R), visit www.entrepreneur.com/eoy.

About Entrepreneur Media Inc.

Scott Smith v. Entrepreneur Media, Inc., Cancellation #92049001, Mark: ENTREPRENEUR EXPO

Entrepreneur Media Inc. is the premier content provider for and about entrepreneurs. Our products engage and inspire every day with the advice, solutions and resources that fuel the bold and independent way entrepreneurs think.

After 30 years, nobody reaches more growing businesses. As the original magazine for the small and midsize business community, Entrepreneur continues to be the definitive guide to all the diverse challenges of business ownership. Entrepreneur.com is the most widely used website by entrepreneurs and emerging businesses worldwide. Entrepreneur Press publishes the books that turn entrepreneurial skills into business success.

To learn more, visit www.entrepreneur.com.

About The UPS Store

The UPS Store and Mail Boxes Etc. retail locations are franchised by Mail Boxes Etc., Inc., a UPS subsidiary. Together The UPS Store and Mail Boxes Etc. locations comprise the world's largest franchise network of retail shipping, postal and business service centers, with more than 5,900 locations around the world. In the United States, The UPS Store and Mail Boxes Etc. locations are independently owned and operated by licensed franchisees of Mail Boxes Etc., Inc. Outside the United States, locations are owned and operated by MBE master licensees or their franchisees. For additional information, please visit www.theupsstore.com or www.mbe.com.

**Entrepreneur Media Inc. Lisa Murray, 949-622-5220 lmurray@entrepreneur.com or
The UPS Store Becca Andrews, 858-455-8982 raandrews@mbe.com
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Court Records Document Career Entrepreneur Had Unusual Capital-Raising Technique; [Home Edition]

TED ROHRLICH. Los Angeles Times (pre-1997 Fulltext). Los Angeles, Calif.: Aug 1, 1986. pg. 1

Full Text (1482 words)

(Copyright, The Times Mirror Company; Los Angeles Times 1986all Rights reserved)

Chase Revel, founder of Los Angeles-based Entrepreneur magazine and author of a number of books on how to start small businesses, took an unusually direct approach to raising capital early in his career.

He robbed banks.

The story of those early escapades surfaced last month in a palimony lawsuit filed against Revel in Los Angeles Superior Court. The suit was filed by Kristin Barrett-Whitney, who says she lived with Revel out of wedlock for a little more than a year in 1984 and 1985.

Barrett-Whitney says she left Revel after he became abusive.

While Revel has not yet filed his answer to the suit, he has denied abusing Barrett-Whitney, who he says was his housekeeper.

Her lawsuit contains court documents, probation records and newspaper accounts about his past.

The documents show that Revel was not the type to simply walk into financial institutions and demand money.

True to the entrepreneurial spirit, he hired others.

Twenty years ago, the lawsuit says, Revel's employees attempted to rob four banks in Houston in one day.

The suit gives this account of his conduct:

Revel's name was not yet Revel, the lawsuit says. He was then known by his given name, John Leonard Burke. However, for the robbery scheme, which one Houston columnist later called "probably the most fantastic" in the city's history-Burke said he was Charles Hudson, an electrical contractor with jobs wiring banks.

According to newspaper accounts filed as exhibits to the palimony suit, Burke, as Hudson, went to the Texas Employment Commission, where he said he needed four men with cars. He would pay them \$2 an hour.

He told the men that their job was to collect his payrolls, and he sent them-all in the same morning-to specific tellers at specific banks.

He told them to present the tellers with bags for carrying the payrolls. He also gave them

Exhibit C

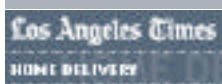
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Partners



sealed envelopes.

Inside each envelope was a note. It was addressed to the individual tellers.

"Keep calm," one note said. "We have your son Mahlon Jr., whom we picked up at school on the pretext you were hurt in an accident. Don't warn anyone of this. The safety of your son is at stake. Fill the bag with 100s, 50s, 20s, 10s, 5s and give the bag to the man. Then go to the bathroom and wait 15 minutes before telling anyone. Remember, do you want your son's life on your conscience? We don't care."

Burke had gotten the names of tellers' children by posing as a telephone survey-taker for a Houston department store, the newspaper accounts said.

His workers were dupes. They really thought they were picking up payrolls.

One of them followed instructions and left a bank empty-handed when the teller whom he was to see was not there.

Another was arrested at a bank.

A third got \$11,000 and turned over the "payroll" to Burke.

A fourth was arrested leaving a bank with about \$10,000.

Police traced Burke to an apartment the same day.

The newspaper articles filed with the lawsuit also said Burke told police that he was an unemployed gossip columnist. He said he had quit his job at a magazine called Fabulous Las Vegas the month before, changed his name to yet another-Jacques Victor Baron-because of a bad credit rating, gotten married and honeymooned in Hawaii.

Burke didn't have much time to enjoy the good life before his arrest, but he calmly told news reporters that he had managed to spend several hundred dollars on caviar. "I'm just full of fish eggs," he told them.

The man one Houston paper described as "droll and dashing" pleaded guilty to one count of bank robbery by intimidation and to two counts of attempted bank robbery by intimidation, according to court records filed with the suit. He also pleaded guilty to robbing a Las Vegas bank of \$5,000 two weeks earlier and to the attempted robbery of another Las Vegas bank.

He was sentenced to four years in prison.

When he was released, he settled in Los Angeles, where, under the name Rio Sabor, he started a successful business called Starving Artists Galleries, according to probation records filed with the suit. There, patrons could pick up oil paintings for under \$7. Sabor called it the "world's largest retailer of oil paintings."

'Forte Is Creativity'

"My forte," he wrote his probation officer, "is creativity, and there are a lot of fields where I can apply it successfully with the necessary capital."

Burke later started another business under one of the names that came up in Houston-Jacques Victor Baron, according to a court record filed with the suit as well as other court records.

He called the business Aetna Express, which he billed as "the West's most dependable shipping agents."

He was indicted in 1972, however, for notifying various people in Utah that Aetna Express was holding packages for them.

He wrote them letters saying: "The sender used improper addressing materials-address smeared-return address unreadable," according to an indictment. "Through our modern tracing facilities," the letters said, it had been "positively determined that this package was intended for (you)."

Exhibit C

Scott Smith v. Entrepreneur Media, Inc., Cancellation #92049001, Mark: ENTREPRENEUR EXPO**Asks for Money**

The letters asked for \$3.35 in extra shipping and handling charges; otherwise, the package would be opened and sold at auction "to recover our cost."

The trouble was, the letters from Aetna were total fabrications, the indictment said.

Court records show Baron pleaded guilty to three counts of mail fraud in 1973 and was placed on probation.

That was the same year, a Department of Motor Vehicles official said, in which Chase Revel got his California driver's license.

Revel's license bore the same general physical description as the license of John Leonard Burke, who, records show, was also known as Jacques Victor Baron.

The Revel and Burke licenses bore the same birth date, and, according to a DMV official, pictures of the same man.

Difference in Ages

But there was one vain difference. Chase Revel's license said he was nine years younger than the now-49-year-old Burke.

In filing her lawsuit, which seeks millions of dollars in damages, Barrett-Whitney said that Revel portrayed himself as a self-made millionaire and the founder of Entrepreneur, a monthly with a circulation of 200,000.

"Little did (she) know," her lawsuit says, "that the man she knew as Chase Revel was actually John Leonard Burke, a convicted felon who had previously committed his crimes in a particularly cruel and heartless manner."

Barrett-Whitney said that she found that Revel had various pieces of identification in different names as she was leaving what she described as an abusive relationship.

She told a reporter that she then searched through federal and state archives in Illinois, Nevada, Texas, Washington, California and other states and even traveled to Hong Kong, where, she said, he has business interests.

Revel, in a declaration filed in a related court battle over possession of his Pacific Palisades house, has said that her claims about the nature of their relationship are not true. He says he hired her as his housekeeper and he denied abusing her.

Both Revel and his attorney declined to discuss the suit with a reporter.

Revel, who has been a subject of feature articles about starting small businesses in publications such as The New York Times, Wall Street Journal and Los Angeles Times, has told interviewers that he began the forerunner of Entrepreneur magazine, which instructs readers on how to become success stories, in 1973.

Exposed Schemes

Called Insider's Report, it told of small business opportunities and exposed schemes designed to separate would-be businessmen from their cash.

Revel subsequently wrote books, such as 184 Businesses Anyone Can Start and Make a Lot of Money, published in 1981 followed by 168 More Businesses Anyone Can Start and Make a Lot of Money, published in 1984.

He told interviewers that he had made millions with many businesses. But in 1982 Chase Revel Inc., which published the magazine, filed for reorganization under Chapter 11 of the federal bankruptcy law. The magazine later became the property of a public company.

Today, Revel employees say that their boss' base of operations is an office at the edge of Beverly Hills, from which he operates a mail-order jewelry company by the name of Van Pler and Tissany.

Exhibit C

Scott Smith v. Entrepreneur Media, Inc., Cancellation #92049001, Mark: ENTREPRENEUR EXPO

Remaining a man of mystery, he declined to confirm or deny who he was. "Under the advice of my attorney," he said, "I have no comment at all on any of the charges in the case."

Are you John Leonard Burke? he was asked.

"We're not making any comment in that direction."

[Illustration]

PHOTO: According to a recent lawsuit, Chase Revel, left, shown a few years ago outside a house he rented in Playa del Rey, had success founding Entrepreneur magazine. The magazine, right, tells readers how to start their own small businesses. Revel is shown above in a pose that appears on the back cover of one of his start-a-business advice books.

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Section: *Metro; 2; Metro Desk*
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Resources 11/03

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By Steve Cooper | [Entrepreneur Magazine - November 2003](#)

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CRMGuru.com, a service of CustomerThink Corp., is an online community focused on customer relationship management (CRM). The site features white papers, archived newsletters, archived articles, case studies, upcoming events and more. You can also get customer retention advice from the site's 200,000-plus members on the discussion boards.

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www.mcafee.com

With one click, McAfee's FreeScan helps detect viruses on your computer— free. McAfee's Web site also offers software to help businesses combat security breaches, spam and viruses.

AdRelevance 4.0

www.adrelevance.com

AdRelevance 4.0 is an Internet research service from Nielsen/NetRatings that measures the effectiveness of online ad campaigns. One helpful feature, AdAcross, lets you track monthly and quarterly spending estimates across 16 different media forms.

Regulatory Alerts

www.sba.gov/advo/laws/law_regalerts.html

The SBA's Office of Advocacy Regulatory Alerts Web page lists proposed government regulations that will affect small businesses and provides links for small-business owners to voice their opinions on the proposals.

Top Site Listings

www.topitelistings.com

Top Site Listings, from Orbidex Inc., offers search engine optimization information for small businesses. The site, designed for everyone from beginners to experts, features how-to tutorials, news, articles and optimization strategies. This site also profiles the top search engines on the Web, explaining exactly what's needed for a high ranking.

E-Zine Queen www.ezinequeen.com

This site, run by Alexandria K. Brown, helps small-business owners publish their own e-zines or e-mail newsletters. You'll find free articles, tips, tutorials, telecourses and more to help you craft a publication that will make you an expert in your field.

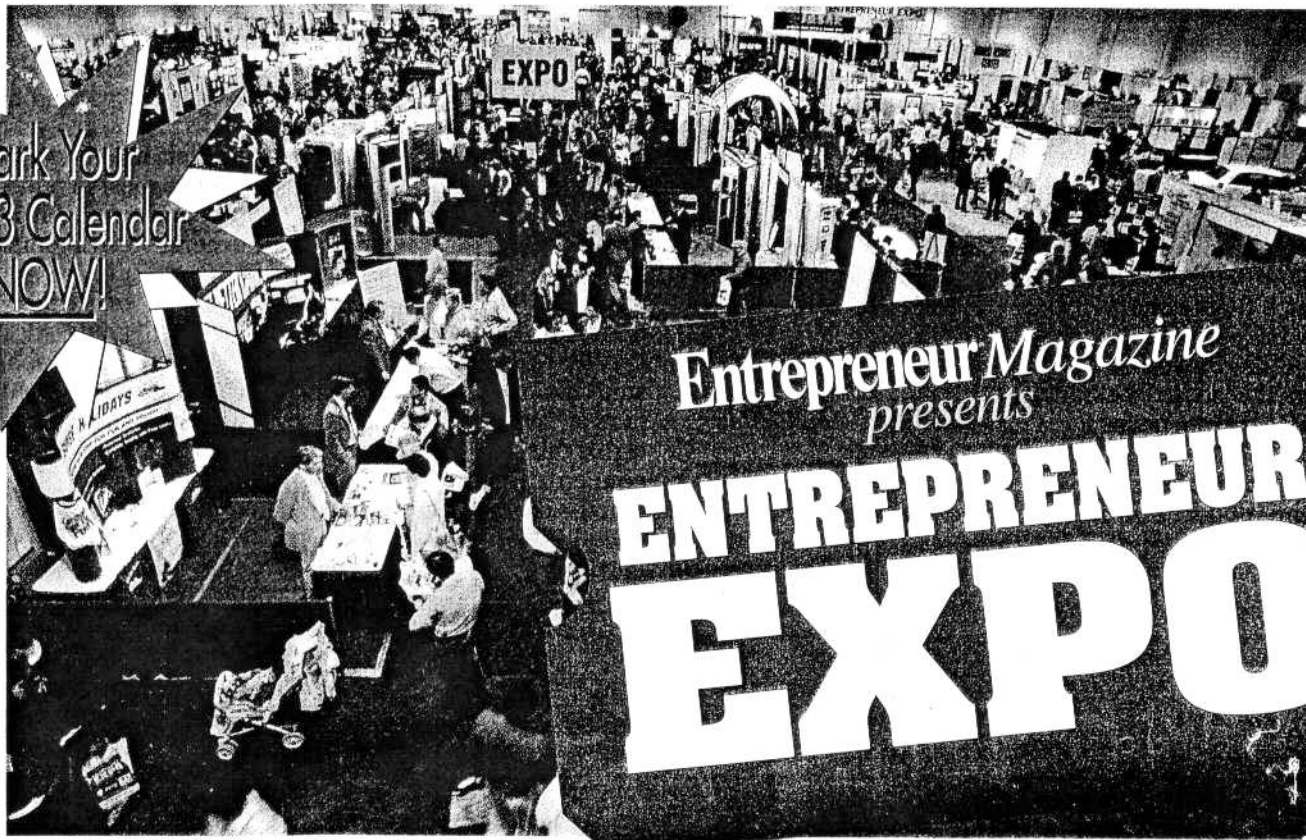
Self-Employment and Entrepreneur Expo

www.jrbwork.com/conference.html

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Indianapolis Business Journal

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VOL. 22 NO. 7, APRIL 30 - MAY 6, 2001

Trademark case irks incubator

Use of terminology in titles is the question

By Scott Olson, IBJ Reporter

John Griffin can't help but wonder whether the Entrepreneur Business Center he manages will become the target of a lawsuit simply because of its name.

The near-east-side incubator that houses 75 businesses in a former grocer's headquarters and warehouse is 2,000 miles from the origins of a California legal dispute over the use of the word "entrepreneur." But Griffin, along with others nationwide who operate enterprises or publications featuring entrepreneur in their titles, feels threatened enough to back a business owner he and others believe is being bullied by a national publication.

"The word entrepreneur is in the dictionary and in the public domain," said Griffin, the center's general manager. "No one has the right to exclude anyone else from using it."

That decision will be left for the 9th Circuit U.S. Court of Appeals, where the case is pending. The publisher of Entrepreneur Magazine is defending with success what it believes are threats to its trademark. It has taken on at least a dozen companies and Web sites, including a Sacramento, Calif., public relations firm formerly known as EntrepreneurPR.

The company, renamed BizStarz, has mounted its own offensive against the publication's demands by appealing the \$337,280 judgment, even though the damages have pushed BizStarz President Scott Smith to the brink of bankruptcy. In its decision, the court also ordered the firm to stop publishing press releases under an Entrepreneur Illustrated moniker.

"They're reaching way past what their trademark rights give them," Smith said. "They chose a very generic, common word."

Griffin is among about 30 advocates of Smith who have filed briefs with the federal appellate court. An attorney for Smith is hopeful arguments will be heard sometime this year. Until then, organizations such as the California Small Business Association, the Institute for Entrepreneurship and the American Institute of Small Business anxiously await a decision.

Meanwhile, a representative for Entrepreneur Media, the parent company that publishes the magazine, maintains Smith is deceiving people by fabricating the publisher's intentions. Griffin and anyone else who uses entrepreneur in a business title have nothing to worry about, unless the trademarked word shows up in the name of a publication, said Rieva Lesonsky, senior vice president and editorial director of Entrepreneur Media.

"You cannot put out a magazine or publication using the word entrepreneur," Lesonsky said. "We filed for trademark protection on that word and we got it legally. We really don't think we're hurting anybody. We're not trying to take the word entrepreneur out of the English language."

Entrepreneur Magazine, which began publishing in 1977, has owned the rights to the word since 1982 -- before anyone knew what entrepreneur meant, Lesonsky said. By the early 1990s, however, the word had become trendy enough that the magazine since has been forced to protect its trademark.

The lawsuits, though, put Entrepreneur Media in a sticky situation, because it must confront the audience it serves. It has published stories about companies, then turned around and sued them for a name change. That's what happened to Smith.

"They're attacking their own market," Smith said. "It's the most ironic thing I've ever heard."

After appearing in the magazine, Lesonsky said, Smith changed the name of his company and put out a publication called Entrepreneur Illustrated.

"People found it confusing because it was so similar," Lesonsky said.

The protection the lower court has given Entrepreneur Media's trademark is unwarranted, said Smith's lawyer, Jeff Kravitz of Sacramento. Kravitz argues that Smith's Entrepreneur Illustrated never competed with the magazine because subscriptions weren't sold. Instead, it simply was a promotional tool touting the success of BizStarz's clients.

Furthermore, Kravitz hopes to bolster his argument by pointing to an unsuccessful attempt by Parents magazine to stop Parent Digest from publishing.

Lesonsky, on the other hand, cites an attempt by a magazine to call itself M-17, which catered to young males. Seventeen was able to stop the use of the title.

But the feud over the rights to entrepreneur reaches far beyond the publishing industry, contrary to what Lesonsky has said, insist Kravitz and Smith.

A company called Stardock was sued in 1997 for selling a computer game called Entrepreneur after the magazine featured the company in an article. In a settlement, Stardock agreed to drop Entrepreneur on future versions of the game. The sequel is called The Corporate Machine.

Backed by the powerful Latham & Watkins law firm in Los Angeles, Entrepreneur Media is going after the little guys who have few resources to fight back, say Smith and Kravitz.

The smaller operations, however, are the least educated about trademark laws, Lesonsky said, noting many are unaware they have infringed upon someone's property.

"We've told a number of people you can't use [entrepreneur]," Lesonsky said. "Usually, they say, 'Oh, OK,' because they weren't aware of [the violation]. We asked [Smith] to stop several times and he didn't."

Accounting giant Ernst & Young, which has an Entrepreneur of the Year program, told USA Today it has been contacted by Entrepreneur Media, but would not comment further.

So Griffin, at the near-east-side incubator, said he would hardly be surprised if one day he receives a letter or phone call from Entrepreneur Media's lawyers.

"[Entrepreneur Magazine] takes its own mailing list and goes down the line and sues people," Griffin said. "I'm probably in line because I am a subscriber. We have to expect the worst and pray for the best and just be prepared."

1 Illustrated on the one hand and *Entrepreneur* on the other
2 hand?

3 A. That wouldn't surprise me at all.

4 MR. FINKELSTEIN: No further questions, Your
5 Honor.

6 THE COURT: Thank you.

7 Cross?

8 MR. KRAVITZ: Yes.

9 CROSS-EXAMINATION

10 BY MR. KRAVITZ:

11 Q. Good afternoon.

12 A. Hi.

13 Q. In your testimony today and in your expert witness
14 report, you've stated that people, if they encounter the
15 word "entrepreneur" would associate it with -- if they
16 encounter the word *Entrepreneur Illustrated* or the company
17 *EntrepreneurPR*, they would associate it with *Entrepreneur*;
18 is that correct?

19 A. Yes.

20 Q. What would people associate *Entrepreneur* with?

21 A. Well, it's a periodical that has existed, from what I
22 understand, over 30 years.

23 Q. Okay. Did you do any research whatsoever, any, on what
24 people associate of word "entrepreneur" with?

25 A. The only thing I did was -- no.

1 done these counts, as far as you know, have not done a count
2 of the word "entrepreneur"; is that correct?

3 A. No. I haven't read those counts. They may or they may
4 not. I can't tell.

5 Q. But you have no knowledge of it and you cannot testify
6 about things you don't have knowledge of, correct?

7 A. Sure.

8 Q. All right. Very good.

9 A. But I can testify as to general trends of the language.

10 Q. Okay. And certainly, what does, you know, what does
11 the word "entrepreneur" mean?

12 A. A innovator who takes on a business which has a certain
13 risky quality to it.

14 Q. Okay. Very good.

15 A. Actually, it has two other meanings that are not
16 commonly in use. One being the sort of -- someone who
17 brings an entertainment event. But that's not one -- that's
18 the French one, but not the English one.

19 Q. Okay. And so aside from the fact -- now, you were
20 commissioned to do your expert report by *Entrepreneur*
21 magazine, correct?

22 A. Yes.

23 Q. And your research subject that you wished to prove --
24 and I am sure it's in your report -- but how much were you
25 paid for producing your report?

1 A. \$2,000.

2 Q. And how much are you being paid to testify here today?

3 A. The same.

4 Q. Okay. An additional \$2,000?

5 A. Yes, sir. My fee for lecturing is typically 2,000.

6 Q. Okay. That's great. Great job.

7 My question then is when they came to you, you
8 were trying to research was whether or not people would
9 associate EntrepreneurPR with *Entrepreneur*, correct?

10 A. EntrepreneurPR and *Entrepreneur Illustrated* with
11 *Entrepreneur*, yes.

12 Q. With *Entrepreneur*. And your result was that you found
13 that people would associate EntrepreneurPR with the word
14 "entrepreneur"?

15 A. I found reasons why they would associate the products
16 with each other based on the words, based on
17 pseudo-suffixes, based on eye movements; and based on
18 informal descriptions, when people would ask me, "What are
19 you doing interesting," I would of course not use the words
20 but I would say, "I'm trying to argue why product X and
21 product XPR or products X Digest are related; and they said,
22 "Gee, that's a no-brainer."

23 So I have that, you know, intuition of my students
24 when I was trying to explain what I was doing.

25 Q. So your result in your study is dependent upon an

1 Q. Based on your experience, you talked about general
2 trends for the word "computer." Do you have any reason to
3 think that the general trend for "entrepreneur" -- let me
4 phrase that.

5 Do you have any reason to think that the word
6 "entrepreneur" there has been a general trend for increasing
7 it since the 1960s more than tenfold?

8 A. No, I don't. It's, as Dr. Farrell said, it's an old
9 word. It has been in existence for a long time in English.
10 I have no reason to think it's suddenly become in vogue
11 although it might perhaps appear because we have access to
12 the Internet and we have, you know, certain periodicals that
13 we can now scan six years' worth of that periodical. But I
14 think that that's a false perception.

15 Q. But, of course, it could increase almost tenfold and
16 still be common --

17 A. Yes, it will still be viewed as low frequency.

18 Q. From a psycholinguistic view.

19 A. Right.

20 Q. You said that the study done in the 1960s, the
21 Kucera-Francis, has been validated or have validating
22 studies. What do you mean by that?

23 A. People who have shown that the reaction time to reading
24 a word to saying, yes, this is a word I know, to saying
25 something about the category of that word, have time and

1 Q. -- Support -- okay. None to that either.
2 Entrepreneur Expansion, ever see that one
3 before?

4 A No.

5 Q. No connection with E.M.I.?

6 A No.

7 Q. Okay. Entrepreneur's Guide to Corporate
8 Credit?

9 A No. No.

10 Q. Entrepreneur's Guide to the Galaxy?

11 A No.

12 Q. The Entrepreneur's Source, have you seen
13 that one before?

14 A Yes.

15 Q. Okay. And does it have any connection --
16 let me -- let me rephrase this one a little
17 different.

18 Where have you seen it before?

19 A They're an advertiser in the magazine.

20 Q. Okay. So, the -- the name of this entity
21 has been published in Entrepreneur magazine; is that
22 correct?

23 A Correct.

24 Q. In fact, they have ads in Entrepreneur
25 magazine almost every month, don't they?

1 A They're a good advertiser.

2 Q. Okay. And they are not related in any way
3 other than being an advertiser to E.M.I.; is that
4 correct?

5 MR. FINKELSTEIN: You mean, corporate
6 relationship?

7 MR. WEISS: Yes.

8 THE WITNESS: That's --

9 BY MR. WEISS:

10 Q. Or any other business relationship with
11 Entrepreneur's Source other than as an advertiser in
12 E.M.I. -- in E.M.I.'s magazine, Entrepreneur.

13 A That's correct.

14 Q. There is none?

15 A Not that I know of.

16 Q. Okay. I just -- your answer might have
17 been ambiguous the way I phrased the question.

18 And do you understand that -- where it
19 says -- the column that says "Reg. Number," do you
20 understand that to be a registration with the U.S.
21 Patent and Trademark Office?

22 MR. FINKELSTEIN: Objection. Lacks foundation.

23 BY MR. WEISS:

24 Q. Well, are you familiar with registering --

25 MR. FINKELSTEIN: That's a different thing. I



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3	78657603	3103835	SWING FOR THE FENCES: SEED INVESTING FOR ENTREPRENEURS	TARR	LIVE
4	78895764		ONE MINUTE ENTREPRENEUR	TARR	LIVE
5	78895754		ONE MINUTE ENTREPRENEUR	TARR	LIVE
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13	78952078	3275172	THE ENTREPRENEUR CAFE, LLC	TARR	LIVE
14	78930693	3260723	YEK	TARR	LIVE
15	78930635	3247212	YOUTH ENTREPRENEURS	TARR	LIVE
16	78916687	3226235	THE ENTREPRENEUR'S GUIDE TO CORPORATE CREDIT	TARR	LIVE
17	78829189	3285846	THE ENTREPRENEUR'S SUCCESS CODE	TARR	LIVE
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19	78820890	3189474	PARTNERS WITH ENTREPRENEURS	TARR	LIVE
20	78804469	3186820	YEO	TARR	LIVE
21	78804436	3186818	YOUNG ENTREPRENEURS' ORGANIZATION	TARR	LIVE
22	78804425	3186817	WORLD ENTREPRENEURS' ORGANIZATION	TARR	LIVE
23	78800344	3186709	EO	TARR	LIVE
24	78706663	3303894	ENTREPRENEUR BUBBLE TEA	TARR	LIVE
25	78685136		ENTREPRENEUR	TARR	LIVE
26	78676938	3365643	ENTREPRENEGRO	TARR	LIVE

27	78660301	3100765	SALON ENTREPRENEUR OF THE YEAR	TARR	LIVE
28	78651690	3331137	THE ENTREPRENEUR'S GODFATHER	TARR	LIVE
29	78642192	3109146	THE ENTREPRENEUR'S SOURCE	TARR	LIVE
30	78639029	3156991	THE MOTIVATED ENTREPRENEUR	TARR	LIVE
31	78635709	3116744	HOME TO LOUISIANA ENTREPRENEURS	TARR	LIVE
32	78628785	3252585	FORUM FOR WOMEN ENTREPRENEURS AND EXECUTIVES	TARR	LIVE
33	78619488	3156849	C.A.S.E., COMPREHENSIVE ADVISORY SERVICES FOR ENTREPRENEURS	TARR	LIVE
34	78598345		THE ENTREPRENEUR	TARR	LIVE
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36	78539406	3152027	ENTREPRENEUR EXPANSION	TARR	LIVE
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54	78016060	2598078	THE ENVIRONMENTAL ENTREPRENEUR	TARR	LIVE
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56	77178398		FOODPRENEUR	TARR	LIVE
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71	77466311		DIVAPRENEUR	TARR	LIVE
72	77361743		KINGDOMPRENEUR	TARR	LIVE
73	77012103	3427392	REALPRENEUR	TARR	LIVE
74	77451831		REAL ESTATE BANKING FOR ENTREPRENEURS	TARR	LIVE
75	77354145		WE BELIEVE IN THE POWER OF THE ENTREPRENEUR	TARR	LIVE
76	77329044		EMPLOYEE TO ENTREPRENEUR	TARR	LIVE

77	77283481		CADREPRENEUR	TARR	LIVE
78	77095240		HNWE	TARR	LIVE
79	77217227		E2E	TARR	LIVE
80	77050452		MINIPRENEUR	TARR	LIVE
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92	77249720		MMI MEDIA MARKETING INTERNATIONAL MEDIA & MARKETING INTELLIGENCE FOR ENTREPRENEURS	TARR	LIVE
93	77439785		IENTREPRENEUR	TARR	LIVE
94	77439529		REAL LIFE E	TARR	LIVE
95	77435063		ENLIGHTENED ENTREPRENEURS	TARR	LIVE
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102	77423072			TARR	LIVE
103	77292082		SPIRITRENEUR	TARR	LIVE
104	77292077		SPIRITRENEUR	TARR	LIVE
105	77230844	3398037	E3FINANCIAL FOUNDED BY ENTREPRENEURS FOR ENTREPRENEURS	TARR	LIVE
106	77261193		EDN ENTREPRENEUR DEVELOPMENT NETWORK LEARN. LAUNCH. RUN. GROW.	TARR	LIVE
107	77414808		ECOPRENEUR	TARR	LIVE
108	77303175		THE LITTLE ENTREPRENEUR THAT COULD	TARR	LIVE
109	77176535	3394337	WILD WOMEN ENTREPRENEURS	TARR	LIVE
110	77412594		ENTREPRENERD	TARR	LIVE
111	77402388		YOUNG ENTREPRENEURS TOOL KIT	TARR	LIVE
112	77409306		ACCELERATED ENTREPRENEUR GROUP	TARR	LIVE
113	77407674		EMPOWERING WOMEN ENTREPRENEURS	TARR	LIVE
114	77115301	3393640	THE INTERNET ENTREPRENEUR	TARR	LIVE
115	77101614		DIVA PRENEURSHIP	TARR	LIVE
116	77012110		ENTREPRENEUR	TARR	LIVE
117	77144083	3389640	I'M THERE FOR YOU BABY... THE ENTREPRENEUR'S GUIDE TO THE GALAXY	TARR	LIVE
118	77247856		ENTREPRENEUR IN THE CITY, THE ON GOING STORY ABOUT A WOMAN ENTREPRENEURS LIFE AND TRIALS AND HOW SHE ALSO HELPS OTHERS TO GO ALONG THE JOURNEY OF INVENTING AND DESIGNING NEW PRODUCTS...	TARR	LIVE
119	77383535		YOUNG ENTREPRENEUR SOCIETY	TARR	LIVE

120	77034543	3382498	COLLEGEPRENEUR	TARR	LIVE
121	77010211		ENTREPRENEURS UNITE	TARR	LIVE
122	77380244		THE LITTLE ENTREPRENEUR	TARR	LIVE
123	77357003		PKF TEXAS - THE ENTREPRENEUR'S PLAYBOOK	TARR	LIVE
124	77352311		CULTURAL ENTREPRENEUR	TARR	LIVE
125	77352284		CULTURAL ENTREPRENEUR	TARR	LIVE
126	77348659		NAESB	TARR	LIVE
127	77345072		CIE	TARR	LIVE
128	77343255		GALPRENEUR	TARR	LIVE
129	77340301		FINANCIAL ENTREPRENEUR	TARR	LIVE
130	77338299		AMERICAN ENTREPRENEUR	TARR	LIVE
131	77330210		BIZ. RESOURCES FOR ENTREPRENEURS	TARR	LIVE
132	77321078		HBCUENTREPRENEURS.COM	TARR	LIVE
133	77320147		FLAUNTREPRENEUR(S) - THE WORD	TARR	LIVE
134	77314385		ENTREPRONEGRO	TARR	LIVE
135	77277539		MASTER ENTREPRENEUR	TARR	LIVE
136	77261551		ACCIDENTAL ENTREPRENEUR	TARR	LIVE
137	77236679		FREEING ENTREPRENEURS TO BE FOUNDERS	TARR	LIVE
138	77229323		XTREPRENEUR	TARR	LIVE
139	77214567		SERVENTREPRENEUR	TARR	LIVE
140	77212373		THE ENTREPRENEUR'S BIBLE, THE BUSINESSMAN'S BIBLE FOR ENTREPRENEURS, THE BUSINESSPERSON'S BIBLE FOR ENTREPRENEURS, THE BIBLE FOR BUSINESS AND ENTREPRENEURSHIP, REVISED KING JAMES VERSION	TARR	LIVE
141	77211514		HERPRENEUR	TARR	LIVE
142	77208981		ENTREPRE-LAWYER	TARR	LIVE
143	77206116		GRANDPRENEUR	TARR	LIVE
144	77203700		ENTREPORNNEURS	TARR	LIVE
145	77199839		SKILLPRENEUR	TARR	LIVE
146	77175649		THE CHURCH WHERE ENTREPRENEURS GATHER	TARR	LIVE
147	77175640		THE PLACE WHERE ENTREPRENEURS GATHER	TARR	LIVE
148	77145469		UNITING THE VETREPRENEURS OF AMERICA	TARR	LIVE
149	77124595		S.O.W.E. NETWORK SOCIETY OF WOMEN ENTREPRENEURS	TARR	LIVE
150	77124243		INVENTREPRENEUR INVENTORS AND ENTREPRENEURS	TARR	LIVE



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	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
151	77075184	3342781	SALESPRENEUREDGE	TARR	LIVE
152	77054470		ME2	TARR	LIVE
153	77054134		YOUNG ENTREPRENEURS TOOL KIT	TARR	LIVE
154	77051808	3287640	THE MARKETPRENEUR	TARR	LIVE
155	77045572	3274030	HIPHOPPRENEUR	TARR	LIVE
156	77027191		INNOPRENEUR	TARR	LIVE
157	76673977		GO-ANYWHERE ENTREPRENEUR	TARR	LIVE
158	76673181		THE PROFESSIONAL SOUND FOR GO-ANYWHERE ENTREPRENEURS	TARR	LIVE
159	76683815		NFIB YOUNG ENTREPRENEUR FOUNDATION	TARR	LIVE
160	76676981	3420812	THE ENTREPRENEUR'S PHONE SYSTEM	TARR	LIVE
161	76249077	2558627	"HELPING ENTREPRENEURS REACH THE NEXT LEVEL OF SUCCESS..."	TARR	LIVE
162	76661051	3411275	ENTREPRENETTE	TARR	LIVE
163	76644866		SEQUOIA CAPITAL ENTREPRENEUR ECOSYSTEM	TARR	LIVE
164	76485811	2975116	ENTREPRENEURS BEHIND THE ENTREPRENEURS	TARR	LIVE
165	76043067	2574386	ENTREPRENEUR BEHIND THE ENTREPRENEURS	TARR	LIVE
166	76673550	3396603	THE VIRTUAL PHONE SYSTEM DESIGNED FOR ENTREPRENEURS	TARR	LIVE
167	76242097	2520062	ENVIRONMENTAL ENTREPRENEUR	TARR	LIVE
168	76680448		THE CONNECTED ENTREPRENEUR	TARR	LIVE
169	76680371		TECHNOPRENUER	TARR	LIVE
170	76679564		ENTREPRENEUR PRESS	TARR	LIVE
171	76679563		EP ENTREPRENEUR PRESS	TARR	LIVE
172	76678925	3374476	WOMENENTREPRENEUR.COM	TARR	LIVE
173	76670060	3266532	ENTREPRENEURENESPANOL.COM	TARR	LIVE
174	76657293	3204899	ENTREPRENEUR'S STARTUPS	TARR	LIVE
175	76653858	3214566	HUSTLEPRENEUR	TARR	LIVE

176	76626431	3128434	ENTREPRENEUR'S ADVOCATE	TARR	LIVE
177	76594018	2984742	ACTORPRENEUR ATTITUDE	TARR	LIVE
178	76588980		THE ENTREPRENEUR'S NETWORK	TARR	LIVE
179	76551778	2986596	VETREPRENEUR	TARR	LIVE
180	76516583	3166835	GLOBAL STUDENT ENTREPRENEUR	TARR	LIVE
181	76483588	2985807	CHRISTIANPRENEURS	TARR	LIVE
182	76473346	2808116	WEST	TARR	LIVE
183	76459007	2746958	AMERICAN ENTREPRENEURS FOR ECONOMIC GROWTH	TARR	LIVE
184	76459000	2746957	AEEG	TARR	LIVE
185	76450033	2822365	BUSINESS LAWYERS FOR ENTREPRENEURS	TARR	LIVE
186	76433733	2717429	WHERE ENTREPRENEURS COME FOR RESULTS	TARR	LIVE
187	76379491	2725755	SISTERPRENEUR	TARR	LIVE
188	76356950	2659076	THE COMPANY WHERE THE ENTREPRENEUR IS KING	TARR	LIVE
189	76356699	2642726	WHERE THE ENTREPRENEUR IS KING	TARR	LIVE
190	76354365	2677261	PE PROFESSIONAL ENTREPRENEUR	TARR	LIVE
191	76337473	2751128	THE 21ST CENTURY ENTREPRENEUR	TARR	LIVE
192	76316327	2688132	ENTREPRENEUR'S PARTNER	TARR	LIVE
193	76302723	2971187	ENTREPARTNERS	TARR	LIVE
194	76283054	2701863	E ENTREPRENEURS' FOUNDATION	TARR	LIVE
195	76266161	2864009	THE ENTREPRENEURS NAVIGATOR SYSTEM	TARR	LIVE
196	76262994	2569917	CAMP ENTREPRENEUR	TARR	LIVE
197	76237274	2529782	ENERGIZING ENTREPRENEURS	TARR	LIVE
198	76206019	2815360	MOMPREENURS	TARR	LIVE
199	76202892	2669983	WORLD ENTREPRENEUR OF THE YEAR	TARR	LIVE
200	76180747	2682426	YTE YOUTH TECH ENTREPRENEURS	TARR	LIVE

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202	76175066	2600509	ENTREPRENEUR'S NETPRENEUR	TARR	LIVE
203	76159837	2502032	ENTREPRENEUR	TARR	LIVE
204	76158406	2684383	THE LAZY ENTREPRENEUR ALL TALK NO FUNDING	TARR	LIVE
205	76158169	2590871	ENTREPRENEWS	TARR	LIVE
206	76129869	2575522	ENTREPRENEUR	TARR	LIVE
207	76112230	2653302	SOYENTREPRENEUR.COM	TARR	LIVE
208	76098144	2568611	ORGANIZED ENTREPRENEUR	TARR	LIVE
209	76097997	2583490	EARTHA ENTREPRENEUR	TARR	LIVE
210	76048888	2587313	ENTREPRENEUR'S N@TPRENEUR	TARR	LIVE
211	76042826	2565006	ENTREPRENEUR'S NETPRENEUR	TARR	LIVE
212	75673295	2391145	ENTREPRENEUR EXPO	TARR	LIVE
213	75669099	2562178	THE ENTREPRENEURS EMPOWERMENT PROGRAM	TARR	LIVE
214	75919975	2526745	WEEKLY ENTREPRENEUR FOCUS	TARR	LIVE
215	75914439	2657703	HISPANIC ENTREPRENEUR	TARR	LIVE
216	75909017	2753477	TEENPRENEUR	TARR	LIVE
217	75909016	2860503	TEENPRENEURS	TARR	LIVE
218	75879145	2529039	SILICON VALLEY ENTREPRENEURS' CONFERENCE	TARR	LIVE
219	75872040	2461221	STEWARDS AND ENTREPRENEURS OF REAL ESTATE	TARR	LIVE
220	75854330	2479268	ENTREPRENEUR'S CORNER	TARR	LIVE
221	75851436	2742522	A.A.C.E. THE AMERICAN ASSOCIATION OF CONSUMERS AND ENTREPRENEURS	TARR	LIVE
222	75791729	2572257	ENTREPRENEUR CARD	TARR	LIVE
223	75749459	2370879	THE SOCIETY OF ENTREPRENEURS	TARR	LIVE
224	75711195	2408039	ENTREPRENEUR MAGAZINE'S SMALL BUSINESS EXPO	TARR	LIVE
225	75582756	2456499	ENTREPRENEURS FUND	TARR	LIVE
226	75216824	2132275	THE INDUS ENTREPRENEURS	TARR	LIVE
227	75498403	2253710	WOMEN ENTREPRENEURS' CONNECTION	TARR	LIVE

228	75492808	2275881	THE ENTREPRENEUR'S SOURCE	TARR	LIVE
229	75449532	2355921	THE E IN ME THE ENTREPRENEUR IN YOU	TARR	LIVE
230	75335213	2208533	FORUM FOR WOMEN ENTREPRENEURS	TARR	LIVE
231	75335211	2197828	FWE	TARR	LIVE
232	75323234	2330578	UNITED PACIFIC BANK THE ENTREPRENEURS' BANK	TARR	LIVE
233	75207312	2169044	THE ENTREPRENEUR'S INVESTMENT BANK	TARR	LIVE
234	75195566	2148911	UNITED ASSOCIATION OF ENTREPRENEURS BUILDING AMERICA'S FUTURE	TARR	LIVE
235	75038828	2102393	THE ENTREPRENEUR'S PROGRAM	TARR	LIVE
236	75018382	2263883	ENTREPRENEUR	TARR	LIVE
237	74180438	1762507	NETWORK OF BUSINESS OPPORTUNITY ENTREPRENEURS	TARR	LIVE
238	74180427	1770565	NETWORK OF BUSINESS OPPORTUNITY ENTREPRENEURS	TARR	LIVE
239	74648333	2049679	GREIF & CO. THE ENTREPRENEUR'S INVESTMENT BANK	TARR	LIVE
240	74564848	1973538	INTERNATIONAL WHO'S WHO OF ENTREPRENEURS	TARR	LIVE
241	74437411	1896156	MBE MINORITY BUSINESS ENTREPRENEUR	TARR	LIVE
242	74352598	1884417	THE FILM ENTREPRENEUR	TARR	LIVE
243	74338109	1790639	ENTREPRENEURIAL C.P.A.'S SERVING ENTREPRENEURS	TARR	LIVE
244	74178307	1797129	ENTREPRENEUR'S ACCESSORY	TARR	LIVE
245	73537579	1453968	ENTREPRENEUR	TARR	LIVE
246	73749392	1587164	ENTREPRENEUR OF THE YEAR	TARR	LIVE
247	73701808	1528830	KEN TREPENEUR	TARR	LIVE
248	73692146	1507086	ENTREPRENNOVATION	TARR	LIVE
249	73692145	1507085	ENTREPRENNOVATION	TARR	LIVE
250	73611054	1423486	THE ENTREPRENEUR'S NETWORK	TARR	LIVE

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Mark A. Finkelstein
Mark.finkelstein@lw.com

850 Town Center Drive, 20th Floor
Costa Mesa, California 92626-1925
Tel: (714) 540-1235 Fax: (714) 755-8280
www.lw.com

LATHAM & WATKINS LLP

December 8, 2004

VIA U.S. MAIL AND FACSIMILE: (770) 729-8028

Ms. Ruth King
1650 Oakbrook Drive, Suite 405
Norcross, GA 30093-1817

Re: Infringement of Entrepreneur Media, Inc.'s trademarks via
ENTREPRENEURSTV.COM

Dear Ms. King:

This firm represents Entrepreneur Media, Inc. ("EMI") in connection with intellectual property enforcement matters. EMI is the owner of the strong registered trademark ENTREPRENEUR® and a family of numerous related trademark and service marks, as well as the website and content of entrepreneur.com, among other intellectual property. See enclosed orders.

It has come to our attention that you are using for commercial gain the trademark ENTREPRENEURSTV on your website at *entrepreneurstv.com*. This mark and domain name are confusingly similar to EMI's ENTREPRENEUR marks. Indeed, the "tv" portion of your mark is less prominent than the "entrepreneurs" portion of your mark, which phrase appears in a font similar or identical to the font used by EMI for its ENTREPRENEUR mark.

Your use of a mark and domain name confusingly similar to EMI's marks in order to sell your products or services is likely to cause—and, in fact, has already caused—confusion, mistake, and deception regarding the source of your goods and services, as well as significant injury to EMI. Indeed, EMI is already aware of actual confusion which, as you probably know, is very strong evidence of potential confusion.

Your actions therefore constitute trademark infringement, unfair competition, deceptive acts and practices, and misappropriation of the valuable goodwill, reputation, and business property of EMI, in violation of federal and state law. Your unauthorized registration and use of a domain name encompassing EMI's famous trademark also may violate 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. If you continue, your actions could also subject you to treble damages, costs, and attorneys' fees.

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File No. 027788-0002

Exhibit J

Ms. Ruth King
December 8, 2004
Page 2

LATHAM & WATKINS LLP

By this letter, EMI demands that you (and any of your or your company's affiliates, officers, employees, and agents and other persons or entities acting in concert with you or your company or at your direction):

1. Immediately cease using and refrain from using in the future the mark ENTREPRENEURSTV, the domain name entrepreneurstv.com or any other image or mark confusingly similar to EMI's ENTREPRENEUR mark, alone or in combination with any words or phrases, in connection with any goods or services provided by you.
2. Transfer the domain name entrepreneurstv.com to EMI in accordance with the policies and procedures of the registrar, Network Solutions, Inc.
3. Agree not to register additional domain names that contain the mark "ENTREPRENEUR."
4. By December 17, 2004, provide full and complete disclosure of all information about your use of the entrepreneurstv.com domain name, including a complete list of (a) all products or services offered for sale or sold through the web site, (b) the quantities sold and prices of each, and (c) to whom each was sold.
5. By December 17, 2004, confirm in writing, by countersigning below and returning this letter to us, that you agree to comply with each of the demands contained in this letter.

If you would like to discuss this matter, please feel free to contact me.

Nothing contained in this letter constitutes an express or implied waiver of any rights or remedies of EMI, all of which are expressly reserved.

Very truly yours,



Mark A. Finkelstein
of LATHAM & WATKINS LLP

The foregoing is acknowledged and agreed to by:

_____ (signature)

_____ (printed name)

Dated: December __, 2004

1 BY MR. KRAVITZ:

2 Q. When you saw -- have you encountered any other
3 businesses that used the word "entrepreneur" in their title?

4 MR. FINKELSTEIN: Objection; relevance. Beyond
5 the scope.

6 THE COURT: Well, I think there is a real
7 relevance problem with -- we know that the word
8 "entrepreneur" is out there in the market.

9 I think there is plenty of evidence of that and
10 it's used by other companies and I think the parties have
11 introduced evidence to that effect so I don't know that
12 spending time with witnesses as to whether --

13 MR. KRAVITZ: I am not trying to introduce that
14 evidence. I am trying to find out factually whether or not
15 he was actually confused by his own knowledge of what was
16 out there in the world.

17 I mean, in this instance, Mr. Finkelstein asked
18 him a little bit based on the fact that he's been in the
19 magazine industry.

20 One of the issues that always goes in a trademark
21 infringement is the sophistication of the buyers. This man
22 has testified to a lot of knowledge, more than the average
23 person; and, indeed, he just testified that he knew that
24 Hearst published a magazine called *Science* and there was
25 another company called *Science Digest*.

Jeffrey S. Kravitz (SBN 186209)
KRAVITZ LAW OFFICE
2728 J Street, Suite 204
Sacramento, CA 95816
Ph: 916-553-4072
Fax: 916-553-4074

Attorney for Defendant

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ENTREPRENEUR MEDIA, INC., a California Corporation, Plaintiff, vs. Scott Smith dba EntrepreneurPR, Defendant	Case No.: No. 98-3607 FMC (CTx) DEFENDANT SCOTT SMITH dba EntrepreneurPR's CLOSING ARGUMENT Complaint Filed: March 8, 1998 Trial Date: April 29, 2003
--	---

INTRODUCTION

This case came before the court for trial after an appellate ruling that clearly indicated what issues were significant for trial. The facts presented at the trial should lead this Court to conclude that there is no need to expand on the limited injunction proposed by the Ninth Circuit.

After the trial it is clear that the plaintiff's trademark is an extremely weak, descriptive or generic mark deserving little or no protection under the law.

1. Strength of the Mark

Based on the evidence presented on the motions for summary judgment, the Ninth Circuit concluded that the Plaintiff's "entrepreneur" trademark was descriptive and weak. It was descriptive because it described the contents and audience of the publication. Entrepreneur Media v. Smith, 279 F.3d 1135, 1142. The plaintiff was given the opportunity at the trial to try and

introduce evidence that would somehow counter the findings of the Ninth Circuit. *Id.* at 1144. Instead, they merely entered the exact evidence that they had shown on their Motion.

The only testimony on this alleged strength was from their own executives. However, evidence from partisan sources about the strength of a mark is given little weight. Filipino Yellow Pages v. Asian Journal Publications, 198 F.3d 1143, 1152. However, all of the defendant's evidence of extensive use of the term entrepreneur by other companies that was part of the record on appeal was entered into evidence here. While the plaintiff argues that the evidence of trademark registrations, internet domain names, trademark searches and the expert witness report of Farrell do not show extensive use of the term "entrepreneur" by other companies, the Ninth Circuit has already ruled that it does. *Entrepreneur Media* at 1143-44.

However, the most compelling evidence of the weakness and indeed genericness of the mark "entrepreneur" came from Ms. Rieva Lesonsky. She is an executive of the plaintiff corporation and thus her statements and actions are admissions of the plaintiff. If plaintiffs use a term themselves in a generic way, that is very persuasive evidence of the generic nature of a term. *Filipino Yellow Pages* at 1150-1151.

Ms. Lesonsky testified that her appearances on the television program "Entrepreneurs Only" as frequently as twice a month, would not lead people viewing the show to believe that there was a connection between these two entrepreneur related parts of the mass media. This is essentially an argument that the mark "entrepreneur" is generic. So generic that people don't even relate mass media uses with very similar names. (*See* exhibit 346)

Indeed, when a mark is so weak and frequently used in the marketplace, people may question whether a relationship exists to discern between the various frequent users of a mark. *Entrepreneur Media* at 1150. However, it is impossible to argue that a mass media trademark is strong but then claim that people won't associate it with other mass media uses of the term.

Is it plausible that Hugh Hefner, the publisher of Playboy magazine would appear on a television program called "Playboys Only"¹, unless they were somehow related?

Lesonsky even testified that *minor differences in the fonts* used by "The Entrepreneur's Source" distinguished it from the trademark of the plaintiff. The distinctions were so important that Ms. Lesonsky testified that people seeing the words "Entrepreneur's Source" right next to the logo of Entrepreneur Magazine in an advertisement by and for a Plaintiff sponsored event, would not associate the company Entrepreneur's Source with the magazine Entrepreneur.

The argument that minor differences in fonts can distinguish between users of the generic term "entrepreneur" is the argument being put forth by the defendant in the case before this Court. The plaintiff has now adopted it and they should be estopped from continuing to argue that Smith's use of entrepreneur is not distinctive.

Indeed, Cynthia House, a witness called by the plaintiff, testified that due to the actions of Entrepreneur Magazine, she believed that there was a connection between the magazine and the Young Entrepreneurs Organization.

Can there be any doubt that the marketplace is awash in uses of the term "entrepreneur" when Ms. Lesonsky appears at the 1st Entrepreneurs Forum, and then testifies that people at the forum would not associate the magazine with the event? (Exhibit 283).

However, the plaintiff is actually arguing that if Mr. Smith appeared at the 1st Entrepreneur's Forum, that this would be an example of his intentionally infringing on the plaintiff's strong trademark.

This Court should find that the plaintiff's trademark is an extremely weak and either a generic or descriptive mark. This finding must color all other assessments of the mark and the issues before this Court as the Ninth Circuit has instructed. *Entrepreneur Media* at 1148.

¹ Playboy has consistently been held as a strong mark in this circuit. *See e.g.*, *Playboy Enterprises, Inc. v. Baccarat Clothing Co.*, 692 F.2d 1272, (9th Cir, 1982)

2. Similarity of the Marks.

As the plaintiff has testified through Ms. Lesonsky, minor differences in fonts are significant. Thus, as the Ninth Circuit noted, the only similarity between the two is the use of the common generic term "entrepreneur". This cannot be counted in Plaintiff's favor, as this would reward them for having a weak descriptive mark. *Entrepreneur Media* at 1148.

3. Proximity of the Parties Goods and Services

There was almost no evidence entered on this issue that differed from the evidence at the summary judgment, and thus the Ninth Circuit's holding that the goods and services were not significantly related aside from the printing of a publication, should stand. The plaintiff's alleged "strategic partnership" with PR newswire is nothing more than normal pass through advertising. Thus this factor should not weigh in favor of finding trademark infringement.

4. Smith's Intent In Selecting the Mark

The record shows that Smith had discovered another company was using his previous name ICON to designate a public relations firm, so he wanted to change from that name.

The testimony of Smith and Von Allmen clearly show that Smith was seeking a name that would help people relate to his business. His business provides public relations services to entrepreneurs. Thus, in much the same way as the producers of "Entrepreneur's Only" wanted to use the term entrepreneur to attract entrepreneurs to a television program about entrepreneurs, Smith wanting to attract entrepreneurs to his company, chose the name EntrepreneurPR.

Smith also conducted several trademark searches to make sure the names were legally available. Indeed, his uncontroverted testimony is that he even mentioned the name change to an editor at Entrepreneur magazine.

While the plaintiff claims that Smith knew that people were confusing his company with EMI, not one single document was produced in which a customer complained to Smith that they had been confused or misled into thinking there had been a connection between Smith's company and the plaintiff's.

The plaintiff makes much of the statements of some former Smith employees that they told him that people on the phone had questioned if there was a relationship between the two companies. However, such evidence is not evidence of confusion, but merely discernment. *Entrepreneur Media* at 1150. Moreover, it makes no sense to say that Smith's returning of a check written out to Entrepreneur Magazine but sent to him for his services, shows intent to deceive. How can clearly indicating to a client the correct name of his company be held against him?

Smith however, had ample reason to believe that his continued use of his tradenames was valid. He continued to do trademark searches that revealed frequent use of the term "entrepreneur." He continued to see articles in Entrepreneur Magazine encouraging the generic use of the word entrepreneur. Ms. Lesonsky was even frequently on the national television program "Entrepreneurs Only". On the appeal he received over sixty letters from business people encouraging him to use the term entrepreneur as they did.

Smith's intent in using the term "entrepreneur" was the same as all other users of the term, to correctly identify his company in the marketplace as one who provides goods and services to entrepreneurs.

5. Evidence of Actual Confusion

The Ninth Circuit has held that the plaintiff here must show that a *significant number* of people are likely to be confused. *Entrepreneur Media* at 1151. The Court must assess the credibility of each witness on confusion, to determine if the testimony was truthful or if it indicated that the individual was confused about everything and weigh the testimony accordingly. *Entrepreneur Media* at 1150-1151.

Certainly, the Court must have noticed that all of the witnesses proffered by the plaintiff on the issue of actual confusion, were involved in payment disputes with Smith. However, aside from testifying in Court on the issue, *none* of these people ever sent a letter or raised as a defense in legal actions, the argument that Smith had deceived them into thinking he was related to the Plaintiff's company. In addition, this Court has to give full faith and credit to the holdings of California Courts that have determined the contracts were valid and that these witnesses owe

Smith money.

Moreover, when the witnesses were cross-examined by simple references to their client files, they had no logical explanation. Some denied knowledge of documents they had sent or received. For example, when Ms. Cesare-Taie was shown an exchange of e-mails between Smith and herself. (Exhibit 311), she denied knowledge of the e-mails. However, in her testimony she remembered every single aspect of her relationship with Smith's company.

Can the Court accept at face value the testimony of Ms. Chippi, owner of and possibly under the influence of The Hemp Company? She claimed Smith solicited her to be in "entrepreneur" when his company was still called ICON Publications. But then she complained when he changed the name to EntrepreneurPR because this upset her? What value could her bizarre testimony have?

The question is not just whether the witnesses testified truthfully, but rather what their own actions indicate. Some witnesses testified that they believed that Smith's company was related to EMI. However, when they later supposedly realized that Smith was not a part of EMI, none of them ever confronted Smith about this, and there are no documents or demands for a refund of their money based on this alleged confusion.

Consider the testimony of Neal Andrews of Bio2 Cosmoceuticals. He claimed he was somehow confused when he signed the contract for services. Yet later, when Smith demanded payment, he showed the contract to his corporate attorney who told him the contract was valid. How could a contract be valid if one of the parties entering it believed at the time of the contract, that he was purchasing different services than those in the contract?

Mr. Andrews, like many of the other clients who testified, sent numerous letters to Smith complaining about and trying to get out of the contract. Importantly, none of these documents mention a belief that Smith was related to EMI. (See Exhibit 266). Indeed, some of these companies allowed default judgments to be entered after discussing the issues with their own attorneys rather than contesting the validity of the contracts. This would hardly be the conduct of business people who claim they entered contracts because they were misled.

The witnesses essentially testified that they were dissatisfied with the services Smith

provided. This isn't evidence of confusion. Perhaps they believed that based on Smith's success in getting some of his clients mentioned in Entrepreneur Magazine, that he would have the same success with them. This isn't evidence of confusion. Moreover, none of them have any documents that prove they every inquired to Smith about when they might be included in Entrepreneur Magazine. Curiously, no clients who were satisfied with Smith's services testified that they were confused. None of the thousands of media contacts that received Smith's publication testified that they were confused.

The plaintiff has gone through Smith's records, and failing to find a significant group of people who were confused, the plaintiff did not conduct a consumer survey, despite their repeated declarations that they would do so. Instead, they found a handful of disgruntled clients who had payment disputes with Smith and were willing to come to court and say the source of their disputes were Smith's use of the word "entrepreneur". Based on such evidence, the Court should not give the plaintiff any protection for their very weak trademark.

This Court must also determine what is a significant amount of actual confusion to not be de minimis. In Thane Int'l v. Trek Bicycle Corp., 305 F.3d 894, 903 n.6. (9th Cir 2002), the Ninth Circuit noted that a control group in a survey of confusion had a ratio of 4% confusion. This is an important statistic, as it means that if a survey was conducted and 4% of Smith's clients claimed confusion, such a finding would be statistically insignificant. Smith has testified that he sent EMI well over three hundred client files. Thus, the amount of people who claimed confusion at trial would be within the norms for a control group and are thus statistically insignificant.

Indeed, the Court has reason to believe that the plaintiff may have indeed conducted a survey as they frequently declared under penalty of perjury they would do so. The results most likely showed a statistically insignificant result. They then presented to the court only those who said they were confused without any control group, thus skewing any result.

Thus, as the plaintiff has failed to quantify the level of confusion in any way helpful to the Court, the handful of clients who testified that they don't like Scott Smith for trying to enforce his valid contracts with them, amounts to little more than irrelevant griping.

6. Marketing Channels

The evidence on marketing channels was essentially identical to that found on summary judgment. Thus, the conclusion that the marketing channels do not overlap in any significant way must stand. *Entrepreneur Media* at 1151-52.

7. Expansion of Product Lines

While the plaintiff argues that they have presented evidence of the expansion of their product lines into "pr" type services, the testimony on the issue revealed they are merely accepting pass-through advertising from a "pr" type company. They are not themselves engaging in, nor do they plan to engage in public relations services. Thus, there is no evidence of expansion.

8. Degree of Care of Purchasers.

As both this Court on Summary Judgment and the Ninth Circuit on appeal affirmed, the services provided are relatively expensive and thus this factor should weigh against the finding of infringement.

9. Balancing of Factors as Applied to Each Use by Smith.

The Ninth Circuit viewed the issue of infringement differently for each of Smith's use this Court should as well.

a.) entrepreneurpr.com.

No evidence was shown that could lead the Court to conclude that the use of this mark by Smith infringes upon the Plaintiff's trademark "Entrepreneur."

Neither company uses the internet to provide web-based services that are pertinent to the issue. *Entrepreneur Media* at 1151-52.

Moreover, all of the witnesses, including the plaintiff's expert witness, said that using web based search engines for the word "entrepreneur" would not lead one to Smith's web site. Indeed, no witnesses testified that they were searching for Entrepreneur Magazine on the internet when they saw Smith's web site. They testified that they were searching for public relations services.

b.) EntrepreneurPR

The Ninth Circuit found that the plaintiff did not significantly relate the providing of public relations services to the publication of a magazine. *Entrepreneur Media* at 1148. The evidence presented at trial should not disrupt that finding.

The witnesses who claimed to testify that they were confused did not testify that the confusion was related to public relations services. They testified that their alleged confusion related to the logo of Smith's publication Entrepreneur Illustrated.

Thus this court should not enjoin Smith from providing public relations services under the name EntrepreneurPR as the plaintiff's mark is extremely weak. *Entrepreneur Media* at 1153.

c.) Entrepreneur Illustrated

Only in the publication of Entrepreneur Illustrated could the Ninth Circuit find any action of Smith's that could be enjoined. The Ninth Circuit believed that a limited injunction would cure the problem. *Entrepreneur Media* at 1153.

However, since the appeal Smith has not used the term Entrepreneur Illustrated, nor published any publication. Thus, there can be no evidence that any post-injunction use of the term by Smith is likely to cause confusion.

If this Court believes that a further injunction needs to issue, it could still only be in relation to the use of Entrepreneur Illustrated as there is still no evidence that any other use could vaguely constitute trademark infringement. Moreover, if the Court makes a finding that the current injunction is not strong enough, the remedy would be some type of disclaimer on the publication if Smith does publish it in the future.

10. Damages.

The plaintiff request for damages is without authority and must fail. First of all, there is no trademark infringement to be found under these facts. Moreover, damages are only available in extraordinary situations, they are "not automatic and must be granted in light of equitable considerations." Lindy Pen Company Inc. v. Bic Pen Corp. 982 F.2d 1400, 1405 (9th Cir. 1993).

The record in this case does not meet the standard of Lindy Pen. In the case at bar, the

plaintiff's mark is extremely weak. The plaintiff, "is not entitled to a windfall." Lindy Pen, 982 F.2d at 1405, citing Bandag, Inc. v. Al Boser's Tire Stores, 750 F.2d 903, 918 (Fed.Cir. 1984). Any sum awarded to the plaintiff "shall constitute compensation and not a penalty." 15 USC § 1117(a).

It is clear from the testimony that the plaintiff has not actually suffered any damages from Smith's actions. Their own witnesses testified that their business expanded during the existence of Smith's company. The plaintiff is asking the Court to give them an absurd windfall, and reward them for using a very weak, descriptive mark. As the Court knows, Smith has filed for bankruptcy. Under all standards of equity, even if this Court was to find infringement, it could not award damages to the holder of a weak trademark.

However, if this Court does find for the defendant by holding that the injunction already issued by the Court cured all issues of trademark infringement, then the Court should award costs and attorney's fees to the Defendant. The plaintiff has continually refused to discuss settlement of this case since the appellate decision. Their actions were calculated to misuse this court and penalize the defendant for having prevailed on the appeal by forcing the defendant to incur expenses for trial.

Respectfully Submitted.

Dated this 29th day of April, 2003

	Jeff Kravitz

Salmon fishing off California, Oregon banned

John Koopman, Chronicle Staff Writer

Thursday, April 10, 2008

(04-10) 20:24 PDT SAN FRANCISCO -- No commercial or recreational salmon fishing will be allowed off the coast of California and most of Oregon this year.

The Pacific Fishery Management Council voted Thursday to cancel the chinook fishing season in an effort to reverse the catastrophic disappearance of California's fabled run of the pink fish popularly known as king salmon.

"I think it's probably the right thing to do," said Barbara Emley, 64, who has run a commercial fishing boat with her husband out of Fisherman's Wharf since 1985.

"It's tough, though. We're going to lose our (fishing) community. People are going to have to figure out what to do with five months of no income."

Just hours after the vote, Gov. Arnold Schwarzenegger declared a state of emergency and sent a letter to President Bush asking for his help in obtaining federal disaster assistance. In addition, the governor's office announced that Schwarzenegger will sign legislation to appropriate approximately \$5.3 million for coastal salmon and steelhead fishery restoration projects.

"California's salmon runs are a treasured state resource and provide significant contributions to our economy and our environment," Schwarzenegger said. "Today's decision by the Pacific Fishery Management Council underscores our responsibility to quickly free up state and federal resources to help the fishing industry cope with the devastating economic impacts closing the season will have.

The Pacific Fishery Management Council considered a variety of options for saving the salmon because too few fall-run chinook came back to spawn in the Sacramento River and its tributaries last fall.

Fishing ban the only option

In the end, it decided the only option was to halt fishing throughout the salmon habitat all along the California and Oregon coasts, the first time that's happened since the federal agency was created 22

Exhibit O

years ago to manage the Pacific Coast fishery. Its management plan required it because of the low numbers of salmon and only an emergency ruling by Commerce Secretary Carlos Gutierrez could change the requirement, and that, according to fisheries experts, is unlikely.

The council's recommendation will be forwarded to the National Marine Fisheries Service for approval by May 1.

"This is a disaster for West Coast salmon fisheries, under any standard," said council Chairman Don Hansen. "There will be a huge impact on the people who fish for a living, those who eat wild-caught king salmon, those who enjoy recreational fishing, and the businesses and coastal communities dependent on these fisheries."

The commercial salmon season off California and Oregon typically span from May 1 to Oct. 31. The recreational season was to have begun on April 5, but was delayed until the council made its decision.

The council canceled the seasons after the fall run in the Sacramento River and its tributaries saw the number of spawning fish drop from more than 800,000 just six years ago to just over 68,000 last year. Experts are predicting that a little more than 50,000 fish will be in the river this coming fall.

The Sacramento fall spawning season was the last great salmon run along the giant Central Valley river system, including the San Joaquin River, and nobody knows for sure what has caused the precipitous decline of the chinook salmon. The National Marine Fisheries Service has pointed to a sudden lack of nutrient-rich deep ocean upwellings caused by ocean temperature changes as a possible cause. But most biologists believe it is a combination of factors, including agricultural pollution, water diversions from the Delta and damaged habitat.

"The reason for the sudden decline of Sacramento River fish is a mystery at this time," said council Executive Director Don McIsaac. "The only thing that can be done in the short term is to cut back the commercial and recreational fishing seasons to protect the remaining fish. The longer-term solution will involve a wide variety of people, agencies, and organizations. But for now, unfortunately, those involved in the salmon fisheries are paying the price."

Millions in losses

If the ban holds, it would mean the loss of \$20.7 million that commercial and recreational salmon fishing brings into the California economy each year. The 400 or so commercial fishermen and women

Scott Smith v. Entrepreneur Media, Inc., Cancellation #92049001, Mark: ENTREPRENEUR EXPO

in the state stand to lose 70 to 80 percent of their annual incomes.

Losses in Oregon would top \$9 million. At least 1,000 fishermen troll the waters for king salmon between Santa Barbara to Washington State.

Zeke Grader, executive director of the Pacific Coast Federation of Fishermen's Associations, said he was disappointed that the decision had to be made, but he doesn't fault the council.

"We're trying to get a disaster declaration to get (fishermen) through this and get them some money until things can be turned around," he said.

The next step, he said, is to get the commercial fishermen actively involved in the decision-making process for addressing water issues in the Sacramento River Delta.

"We've really got our work cut out for us," he said. "We knew there were problems, but this year they really came home to roost."

Tina Swanson, senior scientist at The Bay Institute and a fish biologist, said problems in either the ocean or the river system can disrupt the salmon population, but problems in both areas can be catastrophic. And that is essentially what has happened, she said.

"We can't do anything about conditions in the ocean," she said, "but we can control what goes on in the river. We need to do a better job of management to protect the salmon habitat.

"This isn't something that happened in just one year. It's been going on for some time."

Meanwhile, the people who fish for a living, and those who do it recreationally will not be the only ones to feel the effects of the ban. Consumers will be hurt, as well.

Salmon in fancy restaurants will like go for around \$40 a portion, about twice the normal price.

Michael Weller, executive chef with the California Culinary Academy in San Francisco, said salmon is so popular among consumers that they will continue to buy the fish at markets, even if the price rises substantially.

At restaurants, however, Weller predicted that chefs will not replace wild salmon with the less tasty farm-raised variety. Instead, he said, consumers will most likely see greater choices of striped bass or

Exhibit O

halibut.

The price fishermen get for their catch has gone up from about \$1.75 a pound three years ago to about \$5.50 a pound, but to most anglers, the situation isn't about money anymore. It's about survival of a species.

E-mail John Koopman at jkoopman@sfnchronicle.com.

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/04/10/BAO6103NBB.DTL>

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Rachel Meranus: PR

Drive Media Interest at a Trade Show

Follow these steps to get your business noticed before, during and after the show.
By Rachel Meranus | February 19, 2007

URL: <http://www.entrepreneur.com/marketing/publicrelations/prcolumnist/article174926.html>

Trade shows are a key component of most companies' marketing efforts. And for small businesses, trade shows are especially beneficial because they provide an opportunity to reach a plethora of potential customers, investors, industry analysts and journalists over a very short period of time. However, the limited resources of most small businesses mean you have to extract the most from each appearance as possible. Want to know the secrets to making the contacts you want? Susan McPherson, vice president of global trade show services at PR Newswire, shares her tips for leveraging your participation in a trade show.

Entrepreneur.com: What tools and resources should a small business use to plan for a trade show?

Susan McPherson: Trade shows begin booking exhibitors at least six months in advance. An important step is finding out if the trade show management offers any tools to help exhibitors reap the full benefits. These might include media lists, a website for posting exhibitors' news before, during and even after the show, and special packages and pricing with service providers. These benefits can be especially helpful to a business with limited resources.

You should also consider asking the trade show management about their PR plans. In many cases, there'll be opportunities for riding the coattails of the show's promotional activities. For example, if they're issuing a news release about the event, consider asking if your company can be listed in it as an exhibitor; or offer your participation as a case study for their marketing materials.

If you're launching a new product or service, make sure to target the daily show magazine or newspaper, both online and in print. Also consult the editorial calendars of industry trade publications. Many will run show editions. Keep in mind that most magazines have long lead deadlines, so be sure to make contact early.

And last, but certainly not least, if you're launching a trade show-specific website, be sure to have it populated with relevant content at least three to four weeks beforehand, and make sure that you're able to update it while you're on the road. Use your special event URL in all show-related correspondence, press releases and invitations, and include a link to it from your main website. A well-managed site could be the difference in converting leads to customers.

What's the best way to manage a product launch at a show?

McPherson: There are a few simple steps for getting the most out of launching products at a trade show:

- **Plan ahead.** Develop a calendar of tasks to complete prior to the launch. The calendar should extend at least a month in advance and should account for such activities as drafting and finalizing the launch release and marketing materials, producing graphics or product photos, securing customer testimonials and performing media outreach. Then, align these activities within the timeframe of the trade show. Some tasks may need to be adjusted based on trade show rules and deadlines.
- **If media coverage of your launch is a priority, preview your product for select journalists and analysts ahead of the event.** Doing so will enable those reporters to break the story the day of your official launch. Make sure to obtain the trade show media list as far in advance as possible.

Drive Media Interest at a Trade Show – printable

- **A well-orchestrated product announcement is key to generating publicity.** Check with event organizers to see if there's an official newswire sponsor and if there are any regulations for issuing news at the event.
- **Create a standalone website or product page that can be updated quickly and easily.** Populate the site with information about the launch, including marketing materials, the official launch release, photos, fact sheets and a link to encourage further communication.
- **Make sure you have the right people staffing your booth.** Product managers are essential if you're going to be demonstrating a new service. If you have happy customers who have used your product, you might consider asking them to act as live testimonials at the booth.
- **Unless you're introducing the next iPhone or similar product, don't hold a press conference.** The cost will outweigh the benefits.

How should a company structure its product launch announcement if the news is being issued at a show?

McPherson: Follow the same basic news release writing guidelines as you would for any other announcement. Make sure to address the five W's--who, what, where, when and why--avoid jargon and write a catchy headline that directly relates to the news.

The only major difference between a trade show-based announcement and a standard release will be the dateline. The lead paragraph should indicate that the launch is taking place at the event. This'll add an element of timeliness to the news and attract the attention of reporters assigned to the show.

What's the best way to secure media interviews?

McPherson: Again, plan ahead. Use the media list given by show management, and send out e-mails to reporters who'll be attending. If the show doesn't supply a media list, search for past articles on the event and develop a list of publications and reporters on your own. The same reporter may be assigned to cover the show again. And if not, he or she should be able to point you in the right direction.

Be sure to initiate contact at least two weeks prior to the show. Remember, your company won't be the only one trying to set up an interview. Reporters' calendars fill up quickly. And give the media a reason to take notice. Offer breaking news or a unique angle that distinguishes your company from the other businesses.

Also look for opportunities to secure speaking engagements, either as a keynote speaker or as a participant in a panel discussion. Speaking engagements require extensive planning and creativity, so start early and identify several themes you're comfortable discussing. Don't focus solely on topics directly related to your business. The most enticing speakers are those who can branch out beyond the standard subjects.

What marketing materials should you have on hand?

McPherson: Minimal ones. No journalist wants to carry reams of paper, and with concern for the environment growing, no one likes to see waste. Consider placing all your marketing materials on branded jump drives. You should also include these materials on your trade show website for easy download by journalists when the show is over.

Rachel Meranus is Entrepreneur.com's "PR" columnist and vice president, public relations at [PR Newswire](#). Get more information about PR Newswire and public relations with their [PR Toolkit](#) for small businesses.

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HENRY BISSELL

A PROFESSIONAL LAW CORPORATION

PATENT LAWYERS

HENRY M. BISSELL
HENRY M. BISSELL, IV

6820 LA TUERA BOULEVARD, SUITE 106
LOS ANGELES, CALIFORNIA 90045-1991

TELEPHONE (310) 645-1088
FACSIMILE (310) 645-5331

VIA FACSIMILE TRANSMISSION

June 26, 1998

CONFIRMATION BY MAIL

Sharon K. Sandeen, Esq.
HUNTER RICHEY DI BENEDETTO
& BREWER, LLP
Renaissance Tower
801 K Street
23rd Floor
Sacramento, CA 95814-3525

Re: U.S.D.C. Case No, CV-98-3607 LGB (BQRX)
Entrepreneur Media, Inc. vs.
EntrepreneurPR, etc. et a

Dear Ms. Sandeen:

I have your fax of June 25, 1998. I look forward to meeting you when you visit my office on the morning of July 8, 1998 for the Local Rule 6 conference.

I do not agree with the understanding expressed in the second paragraph of your letter. Entrepreneur Media, Inc., formerly Entrepreneur, Inc., made its earliest use of the trademark ENTREPRENEUR on magazines, reports and other printed matter which is classified in International Class 16. It added goods in Class 9 and then expanded to the offering of services in Classes 35 and 41. We have asserted infringement by your client's use of the term ENTREPRENEUR in the title of his directory (Class 16 goods) as well as his activities on the Internet, which of course are services in Class 35. As you are aware, the classification system is essentially arbitrary and infringement can occur between goods and services in different classes. Therefore, we are not limiting our client to any particular class or type of goods or services. Wherever your client has used the infringing term in the trademark sense, we would contend infringement.

Exhibit Q

Sharon K. Sandeen, Esq.

June 26, 1998

Page 2

I am sure you are also aware that trade names can infringe trademark rights. That is our position with respect to your client's trade name "EntrepreneurPR." We feel that if your client only changes the title of his directory to eliminate infringement, he would still be left with a trade name which could well be used as a vehicle to continue the acts of unfair competition. And of course, by permitting him to retain his trade name, after charging him with infringement by using that name, we would in effect be licensing his use of a term which would continue to degrade my client's trademark rights.

I hope I have made my client's position clear. Your "foregoing settlement offer" is really too nebulous to be characterized as such. For one thing, you have ignored our unfair competition claims for which compensation must be paid.

Very truly yours,

Henry M. Bissell

HMB/ac

cc: Ronald L. Young, Esq.

Exhibit Q

1
2 known as Business Guides or Business Start-Up Guides. Those
3 templates, of which there are approximately 180 different types,
4 have been sold continuously through April 1998. The number of
5 units of each type of template sold and gross revenues thereby
6 generated for the period from February 1997 (when this information
7 was tracked by plaintiff's current fulfillment service) through
8 April 1998 are set forth in attached Exhibit B. FRCivP 33(d).

9 In addition, plaintiff, in conjunction with a licensee,
10 created and developed computer software under the ENTREPRENEUR
11 mark, known as Entrepreneur Magazine's Developing a Successful
12 Business Plan. Both plaintiff and licensee began marketing and
13 selling the software in or about November 1992, with sales thereof
14 ending in or about February 1996. Although plaintiff does not have
15 complete information as to the total volume of, and revenues
16 generated by, licensee's sales of the software, plaintiff, based on
17 royalties received, believes that said sales revenues exceeded
18 \$600,000. Plaintiff will continue to attempt to locate records to
19 indicate the volume of, and revenues generated by, its own sales of
20 the software and, if and to the extent found, will provide any such
21 subsequently-discovered information by supplemental answer to this
22 interrogatory.

23
24 Interrogatory No. 7

25 Identify each and every educational or entertainment
26 service, including computer technology which currently, or in the
27 past, has been created, designed, distributed, provided, licensed
28 or sold by Plaintiff utilizing Plaintiff's Trademark, and for each

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service identified, state the date the service was first provided, state the last date on which the service was provided, state the monthly gross sales for each such service from the date of first use to the present, and describe the geographic markets in which the service has been provided.

OBJECTION TO INTERROGATORY NO. 7.

This interrogatory is objected to for being overbroad and unduly burdensome, as well as seeking information which is irrelevant to the subject matter at issue. Plaintiff's mark ENTREPRENEUR has been in use for more than 20 years and in association with trade shows and educational services since at least as early as October 18, 1991. It is unduly burdensome to require plaintiff to identify each of these various services in the detail sought by this interrogatory.

ANSWER TO INTERROGATORY NO. 7.

Without waiving its objection, plaintiff answers this interrogatory as follows:

Plaintiff has provided educational services, principally in the form of seminars and workshops conducted in conjunction with its trade shows, since at least as early as January 9, 1981. Plaintiff's early trade shows and seminars were associated with plaintiff's service mark AMERICAN ENTREPRENEURS ASSOCIATION. Since May, 1992, plaintiff's trade shows have been conducted in association with the mark ENTREPRENEUR, first as "Entrepreneur Expo" and then as "Entrepreneur Magazine's Small Business Expo". The seminars are principally included in the admission price to the Expo; therefore plaintiff has no separately stated sales figures

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for the educational services. These services have been provided in the following geographical markets: Northern California, Southern California, New York-New Jersey, Philadelphia-Southern New Jersey, Chicago, Ft. Lauderdale-Miami, Dallas-Ft. Worth and Georgia. In addition, at least one ENTREPRENEURIAL WOMAN seminar was held in Orange County in 1992 at which plaintiff's trademarked products and services were offered to the public. A fee was charged for that seminar. The revenues approximated \$25,000.00. Other educational services have included telephone counseling with respect to small business information and resources.

Interrogatory No. 8

State when the Plaintiff first obtained knowledge of Defendant's use of Plaintiff's Trademark, and with respect to such knowledge describe in detail the circumstances under which the Plaintiff acquired knowledge of Defendant's use, identify each employee, agent or attorney of Plaintiff who acquired the knowledge, and identify all documents, including any interview notes and published articles, with respect to when Plaintiff first obtained knowledge of Defendants' use.

OBJECTION TO INTERROGATORY NO. 8.

This interrogatory seeks the discovery of communications which are protected by the attorney/client privilege.

ANSWER TO INTERROGATORY NO. 8.

Without waiving that objection, plaintiff's trademark attorney, Henry M. Bissell, became aware of a newspaper clipping, which might have come from the Wall Street Journal, which mentioned defendant's "new game called Entrepreneur" having an aggressive

1 new editorial written expressly for the website that goes up
2 weekly.

3 Q. Can you buy the books online?

4 A. You can buy the books online.

5 MR. KRAVITZ: Objection; leading.

6 THE COURT: Overruled.

7 Go ahead.

8 THE WITNESS: You can buy the books online. We
9 have a separate part of our site you can get to from the
10 main part of the site but also from *smallbizbooks.com*. You
11 can buy the guides and some of the Entrepreneur press
12 titles.

13 BY MR. FINKELSTEIN:

14 Q. Does Entrepreneur sponsor any activities like trade
15 shows?

16 MR. KRAVITZ: Objection; leading.

17 THE COURT: It's not leading. It doesn't suggest
18 the answer.

19 Go ahead.

20 THE WITNESS: Entrepreneur has -- we sponsor -- we
21 used to have our own expo, entrepreneur expo, small business
22 expo. We currently are sponsoring -- we'll do like a
23 breakfast. We hosted a breakfast for Fleet Bank. They came
24 to us and asked us to do a breakfast.

25 A lot of companies that are trying to reach

1 Sometime, I don't really remember when, in the
2 early '80s, I broke up the encyclopedia and created
3 "Starting Your Business," "Growing Your Business," "Sales
4 and Marketing," because the encyclopedia was large and, you
5 know, about this big (*gesturing*), and it was expensive. So
6 we broke it into smaller, less expensive pieces.

7 *Knock-Out Marketing* is one of the first books that
8 Entrepreneur Press launched. It was one of our first
9 paperback books that was published for the bookstores as was
10 *Where's The Money. Start Your Own Business* was also one of
11 those first books that was published by our Entrepreneur
12 Press Division. All of these. Our *Young Millionaires*.

13 *303 Marketing Tips and Business Plan Made Easy* was
14 the first set of books that we published to go through the
15 bookstores and the online book outlets.

16 Q. Next exhibit, 44.

17 A. This is an ad for the Entrepreneur Expos. We used to
18 do expos for a number of years to -- again, there were --
19 people would go into various cities across the nation.

20 We do a lot of advertising -- radio, TV, newspaper
21 advertising -- and try to attract people into, you know, you
22 would rent a convention center.

23 There would be franchises, business opportunities,
24 and business-to-business marketers who would buy booth
25 space; and people would come in and, you know, shop for

1 whatever it was that they needed at the time.

2 Q. Okay. Exhibit 45, what is that?

3 A. This is -- this is a later iteration of the expos. The
4 other one, as you noticed, was dated '93. This is '98. It
5 was now called The Small Business Expo; and we were doing it
6 in partnership in conjunction with American Express.

7 They were our expos. They were partners. They
8 were sort of sponsors of it. They'd have signs. You got
9 discounts if you showed up with an American Express card
10 and, again, this was -- I think we did, at the height, I
11 think we were doing nine a year.

12 Q. Was the *Entrepreneur* name associated with all of them?

13 A. Absolutely on the radio, advertising, the TV
14 advertising, newspapers, everything. I used to record the
15 radio commercials. It was kind of fun. *(Laughing.)*

16 Q. The next exhibit is 46. What is Exhibit 46?

17 A. It looks like an ad that was in another publication.
18 You go into a city and try to team up with either a local
19 radio station or one of the business journals so they could,
20 you know, through their readership, they would bring people
21 who you might not have as readers of your own magazine so
22 they could bring people into the expo hall.

23 Q. Okay. Next exhibit I'll introduce is 47. Tell me what
24 47 is.

25 A. This is the same thing. You know, sometimes you put an

1 ad in the newspaper with a coupon and you clip it out and
2 you get dollars off or free admission, whatever promotion
3 you were running at the time. This was for the expo.

4 Q. So this was an advertisement in the newspaper?

5 A. Yes, it looks like a newspaper advertisement.

6 Q. Exhibit 48, that's what?

7 A. Also looks like a newspaper advertisement for the
8 Chicago show. The previous one was New Jersey. We did the
9 major cities across the U.S. every year.

10 Q. And Exhibit 49 is more of the same?

11 A. Yes. The same thing. L.A.

12 Q. This is Exhibit 50.

13 A. 50 is the section in the magazine that sells the
14 start-up business guides. They generally have anywhere from
15 6 to 8 pages in every issue of the magazine to, you know,
16 sell the restaurant, whatever it is, whatever books we want.

17 Q. Another exhibit, 51.

18 A. It's another page from the same kind of thing. The
19 design of that changes constantly, you know. The person who
20 is in charge of that is always testing. It's sort of a
21 direct marketing business. So you have to test your
22 message, test your headlines, test your layout, test your
23 design.

24 Q. What about Exhibit 52? What is that?

25 A. 52 is another ad for the *Entrepreneur*. Actually, there

1 are several different ads for the Entrepreneur Expo, the
2 Small Business Expo.

3 You would run different kinds of ads. The one on
4 top is to attract entrepreneurs, small business owners,
5 people who want to start a business themselves to come to
6 the expo.

7 The second one is designed to attract people who
8 want to exhibit. It's more -- it's not internal but you
9 would send it to a franchise company or to somebody like ATT
10 or American Express and say "Come buy exhibit space."

11 The third one, for a while we tried -- expos are
12 expensive; and we were breaking even and decided it was a
13 lot of effort to break even. So we tried to do it online
14 and create a virtual expo.

15 So we ran some ads for that. It really didn't
16 work. The technology was not quite there yet, but we tried
17 it for a while.

18 This is -- the next is an ad that is asking
19 advertisers to advertise in *Entrepreneur's Be Your Own Boss*
20 which is one of the iterations of the logo. It's a
21 different logo today.

22 And there is the -- sometimes they send oversize
23 postcards to the advertisers, and that's what it looks to be
24 like.

25 Q. Okay. The next exhibit in your stack is Exhibit 93

1 BY MR. WEISS:

2 Q. Do you -- are you still using the service
3 mark "Entrepreneur" in conjunction with trade
4 seminars? You're not anymore?

5 A We don't do trade seminars anymore.

6 Q. The -- what is the business of Entrepreneur
7 Expo?

8 A Entrepreneur Expo is -- was a company that
9 put on expos, small business expos.

10 Q. Okay. The type of activities that service
11 mark was related to; correct?

12 A I -- I believe so.

13 Q. Okay. Are you aware of the fact that there
14 was a recent registration or application to register
15 that --

16 MR. SMITH: To renew.

17 BY MR. WEISS:

18 Q. -- to renew the mark for Entrepreneur Expo?

19 A That we renewed?

20 Q. Yeah.

21 A We renewed?

22 Q. Yeah.

23 A It's possible.

24 Q. Okay. And what -- do you know what the
25 intended use of that mark would be if you no



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HEADLINE

April 24, 2008

Headline Results

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Battle erupts over the right to use the phrase "Entrepreneur Expo"

Scott Smith, President of Sacramento-based BizStarz, a public relations company for entrepreneurs, has filed a trademark fraud case against Entrepreneur Media Inc. (EMI), publishers of Entrepreneur magazine.

The suit alleges that EMI made false statements to the U.S. Patent and Trademark Office to secure rights to the words "Entrepreneur Expo," claiming to be actively using the name for trade shows when it had stopped producing such trade events.

"EMI's fraudulent efforts to hi-jack the phrase 'entrepreneur expo' are harmful to all entrepreneurs and pose a major threat to all the organizations that produce entrepreneur expos since EMI will likely sue them unless this trademark is cancelled by the PTO (Patent and Trademark Office)," says Smith.

EMI has petitioned the Patent and Trademark Trial and Appeal Board to dismiss the case. It argues that Smith has no standing to bring the case and disputes that it ever defrauded the PTO.

"When we filed our mark years ago, we submitted evidence of its use. We haven't produced large trade shows in a number of years although we did partner with State Farm on a smaller event in 2006. But, we hold the mark until it expires," says Entrepreneur Corporate Counsel Ron Young. "We haven't decided if we're going to organize larger events like we once did yet."

Smith now has a month to respond to EMI's motion to dismiss the case.

Contact: Scott Smith, BizStarz, (916) 453-8611; Ron Young, EMI Corporate Counsel, (949) 622-5279.

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Scott Smith v. Entrepreneur Media, Inc., Cancellation #92049001, Mark: ENTREPRENEUR EXPO

BRAND NAME BULLIES
THE QUEST TO OWN AND CONTROL CULTURE



BRAND NAME BULLIES

**THE QUEST TO OWN
AND CONTROL CULTURE**

DAVID BOLLIER
COFOUNDER OF PUBLIC KNOWLEDGE



Exhibit V

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Exhibit V

to special interest groups: over \$10 billion. Finding out the truth: priceless. There are some things money can't buy. Without Ralph Nader in the presidential debates, the truth will come in last."

Claiming its trademark had been violated, MasterCard sued Nader for \$15 million. A spokesman said, "This is clearly not a spoof; it's a misappropriation of our valuable property in an ad intended for promotional use." Nader's ads, she said, "could create the confusing impression that we support Ralph Nader."

In response, Nader reportedly quipped, "I guess MasterCard doesn't think the word 'priceless' is really priceless." Nader said his spots were clearly parodies, and thus protected, expressive speech. "Let me assure MasterCard's executives that the last thing I want consumers to believe is that my campaign is in the business of selling credit cards," he told CNN.

In characteristic fashion, Nader seized upon MasterCard's attack as an opportunity to counterattack: "It is certainly time for everybody in the country to focus on the enormous gouging that millions of Americans are exposed to, the deceptive practices of credit card providers," he said. "MasterCard is taking itself a little too seriously and, in typical corporate style, is trying not only to dominate the credit card industry . . . but also wishes to control the arena of free speech and the free flow of creative ideas in the political arena."

To defend his ads in court, Nader enlisted the UC Berkeley law professor Mark Lemley, who said that the case was the first time that anyone had tried to enjoin a campaign ad in the middle of a campaign. He added, "It would be a bad precedent to be enjoining political ads on the basis of trademark claims." The court brief filed for Nader insisted that the ads were a spoof: "It seems quite clear that everyone except MasterCard 'gets' the joke. Virtually all the news commentary on the ad comments on the ironic juxtaposition of Nader's 2000 ad with MasterCard's campaign."

On September 12, 2000, a federal judge dismissed MasterCard's request for an injunction, saying the company had failed to prove irreparable harm to itself. But the lawsuit was still pending in 2004.

When a company trademarks a term, the law grants greater protection to distinctive words that have acquired a "secondary meaning" associated only with the company or product. For example, made-up words like "Xerox" and "XyWrite" are clearly more distinctive and therefore more protected than common words. Yet this general principle did not help California entrepreneur Scott Smith. A court told him he could not name

his public relations firm “EntrepreneurPR” or name an annual publication *Entrepreneur Illustrated*.

A company called Entrepreneur Media Inc. already claimed a trademark in “Entrepreneur,” the title of its magazine. In 2000, a federal judge stopped Smith from using the word “entrepreneur” and ordered him to pay \$337,280 in damages. Smith subsequently changed his company’s name to “BizStarz.” On appeal, the Ninth Circuit upheld the claim of infringement with respect to *Entrepreneur Illustrated* because the word “Illustrated” was in much smaller type, making it more likely that consumers would confuse it with *Entrepreneur* magazine. But it ordered that a jury assess whether the other uses of “entrepreneur”—EntrepreneurPR and the Web site address “entrepreneurpr.com”—constituted a trademark infringement.

Entrepreneur Media Inc.’s campaign against other uses of “entrepreneur” did not stop there. It informed *Female Entrepreneur*, a new magazine, of its displeasure with its name, persuading its publisher to change the name to *Fempreneur*. The company’s affiliated radio program, membership organization, and regional publications, each of which also used the term “female entrepreneur,” also changed their names. Another magazine that felt the heat from Entrepreneur Media and changed its name was *Young Entrepreneur*.

One wonders if other publications using the word “entrepreneur”—*Entrepreneur’s Journal*, *Entrepreneurs’ Chronicle*, *Dental Entrepreneur*, and *Extreme Entrepreneur*—will soon be sporting new names.

No word is apparently too common to fight about. In September 2003, the Fédération Internationale de Football Association threatened legal action against Nike, the sportswear maker, for using the words “USA 2003.” The association claimed that using these symbols on apparel would constitute unfair competition and false advertising. The association said that it had successfully defended trademarks in “France 98,” “Korea/Japan 2002,” and “Germany 2006” on shirts, hats, and other merchandise. “USA 2003” was just another example of unauthorized use of a trademarked term, the association said. Nike responded that the term was not even trademarked and won a court ruling that the association had failed to establish a “secondary meaning” for the term.

There are plenty of newspapers named *Times* and *Gazette*. So why should the *Village Voice* be able to claim a monopoly on newspapers named *Voice*? In 1998, Fran Reichenbach started a community newspaper



[Sacbee: News](#)

NAME CLAIMING TWO COMPANIES BATTLE OVER RIGHT TO USE "ENTREPRENEUR"

April 15, 2000
Section: BUSINESS
Page: F1

By Pam Slater

Bee Staff Writer

--Name name bo bame, banana fana fo fame, me my mo mame, name. The Name Game.

Only the name game hasn't been much fun for **EntrepreneurPR**, a small Sacramento public relations firm that is being sued for trademark infringement by Irvine-based Entrepreneur Media Inc., publisher of Entrepreneur magazine.

Entrepreneur Media claims exclusive rights to the word "entrepreneur" -- a name it has used since 1978 and first registered as its trademark in 1982.

"We believe there is a very good likelihood for confusion," said Entrepreneur Media corporate counsel Ron Young.

Conflicts over such "intellectual property" have become more common recently, spurred in part by the growth of new technologies.

The disputes have led to costly litigation and courtroom battles nationwide, including dozens of cases in Sacramento.

"The growth of cyberspace and the increase in marketing that is taking place on the Internet . . . have resulted in more opportunities for potential disputes," said Adrienne Berman, spokeswoman for the International Trademark Association in New York.

"The trademark owner is motivated to preserve the integrity of that trademark and the identification between that trademark and their particular product. They certainly would not want their name to become generic, in which case anybody could go and use it," she said.

EntrepreneurPR, a 5-year-old company with offices on Florin Road, and its president, Scott Smith, were sued in May 1998 in federal court in Los Angeles by Entrepreneur Media, which demanded that the public relations firm cease using the name immediately.

The case is scheduled to go to trial at the end of June. Damages were not specified.

In particular, Entrepreneur Media took exception to the Sacramento company's publication, Entrepreneur Illustrated, a collection of press releases bound in a volume that is distributed to the news media and company clients.

"We have a number of magazines with the name 'entrepreneur,'" said Young of Entrepreneur Media. "We promote entrepreneurship and do public relations, if you will, for entrepreneurs and entrepreneurships and small businesses. And he (the Sacramento firm) claims to do the same thing."

The Webster's New World College Dictionary defines "entrepreneur" as a "person who organizes and manages a business undertaking, assuming the risk for the sake of the profit."

"If I say the word 'entrepreneur' to a group of people, they think of a type of person," said Smith of **EntrepreneurPR**, who has spent about \$60,000 in legal expenses so far.

"They don't think of a magazine. We do not have people calling us and confusing us with them and they admitted to us that they don't have people calling them confusing us with them."

Plus, Smith says, there are dozens of examples of other people using the word, including The Young Entrepreneurs Network, Entrepreneurs.com, CNNfn Entrepreneurs Only, a television program, and Entrepreneur of the Year Institute.

Smith's attorney, Jeffrey S. Kravitz, denies that Entrepreneur Media or any of its publications has been harmed in any way.

"We've got nothing against them," Kravitz said. "We're not out there trying to harm them or take anything from them."

Young disagrees. At one time, he said, Entrepreneur Media allowed Smith's company to link up to their Web site when **EntrepreneurPR** was known as Icon Publications. It wasn't long before Smith changed his company's name to **EntrepreneurPR**, Young said.

"From our perspective, the sequence of events would lead one to believe he was aware of our marks and, secondly, he was attempting to trade on the good name that we had established over the years," Young said.

He denied it was a David vs. Goliath conflict.

"We don't go after just the little guys . . . but the law requires us to," Young said. "If you don't protect your mark, you lose it and it becomes generic. When it becomes generic, it is unprotectable -- like 'escalator' and 'cellophane.' "

Similar trademark battles have been fought by other local companies.

The California Journal, a Sacramento-based monthly magazine about state politics and government, went after the Wall Street Journal in 1996 to get the newspaper to drop the name "California Journal" that it was planning to use in a weekly section.

The lawsuit was settled in 1998 when the Wall Street Journal agreed to use merely "California" as its section header.

Susan Tiesing, owner of then-Bloomingdeals, a used-clothing shop at 22nd and J streets, was sued last year by Bloomingdale's. Six months later, she agreed to change the name.

Several years ago, another Sacramento used-clothing store found itself in similar circumstances. Saks Fifth Avenue threatened to take legal action against Sac's Thrift Avenue. The latter reluctantly became just plain Sac's.

Phillips Vineyards of Lodi is currently suing R.H. Phillips Wine Co. of Esparto in Yolo County to protect its name after the Esparto company asked the Lodi company to stop using the name.

"We existed peacefully for a long time," said David Phillips, who along with his brother, Michael, runs the Lodi operation.

"It's a family name. It is actually our name. When you can't use your own family name on your products, it is really frustrating."

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→ **Entrepreneur Reveals New No. 1 Franchise for the First Time in 7 Years With the 29th Annual Franchise 500(R)**

Website

IRVINE, Calif., Dec. 12 /PRNewswire/ -- Recognized by entrepreneurs and franchisors as the most comprehensive listing available, the Franchise 500(R) in Entrepreneur's January issue reveals for the 29th straight year the latest top-ranking franchise companies in the nation. The 29th annual ranking uncovers 7-Eleven as the new No. 1 franchise, moving Subway from the top spot to the runner-up for the first time in seven years.

→ The Franchise 500(R) includes 500 companies that together generated a total of \$305 billion in revenue worldwide. "After nearly three decades of meticulously gathering, sorting and evaluating hundreds of franchises for the ranking, we continue to see franchises drive massive economic growth, creating countless business opportunities for people with the entrepreneurial mindset," says Rieva Lesonsky, senior vice president and editorial director of Entrepreneur.

7-Eleven, after making it to the top 10 an impressive 16 times, now claims the No. 1 position for the first time ever in the Franchise 500(R). With an expanding store base, a proprietary IT system determining in-store product assortment, exclusive brands, and the ability to take advantage of local trends even as a global company, 7-Eleven has multiple strengths keeping its success on the rise.

The 500 companies and their rankings are determined by using an exclusive formula that takes into account objective and quantifiable factors for all companies. The most important factors include financial strength and stability, growth rate and size of the system. All franchises are given a cumulative score, and the 500 franchises with the highest cumulative scores become the Franchise 500(R) in ranking order.

Over its 29 years in existence, the Franchise 500(R) has become both a dominant competitive measure for franchisors and a primary research tool for entrepreneurs. The January issue containing the ranking is a complete reference guide for entrepreneurs, revealing not only the companies listed according to their industry categories, but also information on conducting due diligence before buying a franchise, getting in on the latest trends, and programs that help with starting a franchise.

To view the full ranking, visit <http://www.entrepreneur.com/franchise500>. The January issue of Entrepreneur magazine is available on newsstands starting December 25, 2007.

About Entrepreneur Media Inc.

→ Entrepreneur Media Inc. is the premier content provider for and about entrepreneurs. Our products engage and inspire every day with the advice, solutions and resources that fuel the bold and independent way entrepreneurs think.

→ After 30 years, nobody reaches more growing businesses. As the original magazine for the small and midsize business community, Entrepreneur continues to be the definitive guide to all the diverse challenges of business ownership. Entrepreneur.com is the most widely used website by entrepreneurs and emerging businesses worldwide. Entrepreneur Press publishes the books that turn entrepreneurial skills into business success.

To learn more, visit <http://www.entrepreneur.com>.

To advertise, please contact us at <http://www.entrepreneur.com/mediakit>.

Website: <http://www.entrepreneur.com/>



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Exhibit Y

YOUR COMPANY; HEARD ON THE BEAT / YOUR COMPANY; Publisher Accuses Companies of 'Entrepreneur' Trademark Infringement; PR firm's owner and others have been subject to cease-and-desist letters for the use of the word.

[Home Edition]

Los Angeles Times - Los Angeles, Calif.

Author: DENISE GELLENE Denise Gellene; LEE ROMNEY; MARLA DICKERSON

Date: Oct 4, 2000

Start Page: 6

Section: Business; PART- C; PART-; Financial Desk

Text Word Count: 397

Document Text

Scott Smith says he can identify with Entrepreneur magazine's current cover story, "Entrepreneurs Under Attack."

That's because the Sacramento PR man is fighting trademark infringement accusations from a bigger company: Entrepreneur Media, the magazine's Irvine-based parent.

In January 1998, Entrepreneur Media sent a cease-and-desist letter to Smith and his public relations firm, Entrepreneur PR. The letter said that the publisher had registered the word "entrepreneur" in 1982.

Entrepreneur Media sued Smith in federal district court in Los Angeles in March 1998. Judge Florence-Marie Cooper ruled against Smith in June, but he is appealing that decision. Cooper ordered Smith to stop using entrepreneur and pay his adversary damages of \$337,280.

The publisher has sent cease-and-desist letters to other companies using entrepreneur in their names. Young Entrepreneur newsletter, based in Atlanta, changed its name to Y&E last year rather than fight Entrepreneur Media. Asian Entrepreneur of Diamond Bar changed the name of its publication to Asian Enterprise after it received a letter in 1994.

Ernst & Young, which runs an awards program for entrepreneurs, said it received a letter from Entrepreneur Media two years ago. But the accounting firm hasn't changed the name of its Entrepreneur of the Year program and continues to publish a magazine listing the winners, said Nancy Clark, who runs the program for the firm.

Some small-business leaders think it is time for a cease-fire.

"It's hard to see how this is good for our community or for Entrepreneur magazine," said Steve Mariotti, president of the New York-based National Foundation for Teaching Entrepreneurship. "I don't think anyone should own the word entrepreneur."

As a show of support for Smith, the 187,000-member California Small Business Assn. recently selected him as one of 40 panelists for its annual small-business round-table later this month. Said CSBA President Betty Jo Toccoli: "Most small businesses would change their name. Scott has chosen to fight for what he built."

Entrepreneur Media Chairman Peter Shea said the dispute "isn't about going after entrepreneurs. We're obligated to protect our name."

Aware that the case has been mentioned in Forbes, Fortune, Business Week, the Wall Street Journal (and now The Times), Shea voiced respect for Smith's media prowess. "He does crank out the PR."

Credit: TIMES STAFF WRITERS

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Exhibit Z

1 Q. Okay. Do you see in the ad that in the photograph
2 showing people what would be at this event, there is a --
3 something called "Entrepreneur's Source." Do you see that?

4 A. Yes.

5 Q. Is Entrepreneur's Source related to Entrepreneur
6 magazine?

7 A. No.

8 Q. Does Entrepreneur magazine license the name
9 "Entrepreneur Source" to them?

10 A. No.

11 Q. Would it be correct to say -- and, in fact, is it true
12 that Entrepreneur Media, Inc., the plaintiff in this
13 litigation, designed this advertisement and placed it in
14 their own publication?

15 A. Yes.

16 Q. And it is true that within that publication located
17 right next to each other is an advertisement for
18 Entrepreneur magazine right next to Entrepreneur Source to
19 go to an Entrepreneur magazine event; that is correct?

20 A. Yes.

21 Q. Do you believe it is possible that a person viewing
22 that advertisement may believe that Entrepreneur magazine is
23 related to Entrepreneur Source?

24 A. No.

25 Q. Why not?

1 remember. I was on the show a lot.

2 BY MR. KRAVITZ:

3 Q. You frequently appeared on the CNN television program
4 called *Entrepreneurs Only*?

5 A. Yes, I did.

6 Q. Now, do you have any idea what the viewership of that
7 program is?

8 A. The program has been off the air for a while, cancelled
9 for lack of viewership so I would say not a lot.

10 Q. Well, I certainly don't think it was because of your
11 appearances on the program. I'm sure you were quite stellar
12 on it. But do you have any idea how many people watched it?

13 A. No.

14 Q. And the name "*Entrepreneurs Only*" was not licensed to
15 CNN; is that correct? I think you already stated that,
16 right?

17 A. Right.

18 Q. All right. And you appeared there every couple of
19 weeks?

20 A. For a while.

21 Q. As an expert on entrepreneurship, correct?

22 A. Yes.

23 MR. KRAVITZ: Okay.

24 Could I have some water, Scott.

25 (Pause in the proceedings.)

1 BY MR. KRAVITZ:

2 Q. Now, in the last decade, ten years, I believe it's your
3 testimony that the readership of Entrepreneur magazine has
4 increased?

5 A. Yes.

6 Q. Okay. Advertising sales increased?

7 A. Yes.

8 Q. The business has been going up?

9 A. Yes.

10 Q. Has there been any decline in business over the last
11 couple of years?

12 A. We had a dip a couple of years ago.

13 Q. What do you attribute the dip to?

14 A. The dotcom crash like every other business magazine had
15 a lot more ads in '98 than you did in 2000.

16 Q. Where is my list here? There it is.

17 Does Entrepreneur magazine accept advertisements
18 from other companies that use the word "entrepreneur" as
19 part of their tradename?

20 A. As part of their tradename? I -- The Entrepreneur
21 Source would be -- that's not Entrepreneur, though.

22 Q. The Entrepreneur magazine, does it accept advertising
23 from Entrepreneur Source?

24 A. Yes.

25 Q. Are you familiar with the Entrepreneur of the Year

1 between that program and *Entrepreneur* magazine?

2 A. No.

3 Q. When Scott Smith uses the expression "EntrepreneurPR,"
4 will that make an association between *Entrepreneur* magazine
5 and Scott Smith's company?

6 A. I think it could. CNNfn *Entrepreneurs Only*. It's not
7 Scott Smith's EntrepreneurPR.

8 Q. I think the question has been answered.

9 Okay. I'd like you to take a look at Exhibit 323.

10 A. (Witness searching.) Mark, do I have this?

11 MR. KRAVITZ: I think we're going to need it.

12 Could you give her a copy of it? It would be easier. Okay.

13 (Counsel conferred.)

14 (Pause in the proceedings.)

15 BY MR. KRAVITZ:

16 Q. Did you find it?

17 A. Yes.

18 Q. Okay. All right.

19 Now, earlier during your direct testimony with
20 Mr. Finkelstein, you testified about people enjoying the
21 fact that they were mentioned in *Entrepreneur* magazine. Is
22 that correct? That's what you testified about?

23 A. Yes.

24 Q. You said that people any mention in the magazine is
25 promotion?

1 A. I don't believe I used those exact words. I said they
2 can use it as promotion.

3 Q. And -- but I believe it is correct to say that,
4 generally speaking, appearing in *Entrepreneur* magazine is
5 something that is good for a company; is that correct?

6 A. Yes.

7 Q. Especially during the editorial, in the editorial
8 section of the publication.

9 Now, this article on page -- that I've shown you,
10 this Exhibit 323, do you see in there that it mentions
11 Scott Smith and *EntrepreneurPR* and *Entrepreneur Illustrated*?

12 A. Yes.

13 Q. And it clearly explains that Smith has started the
14 company *EntrepreneurPR* in Sacramento; is that correct?

15 A. Yes.

16 Q. And then later it says that the company publishes the
17 quarterly *Entrepreneur Illustrated* as well as online
18 articles aimed at small business, right?

19 A. Right.

20 Q. So that Scott Smith's company *Entrepreneur* magazine,
21 was mentioned -- let me just step back a second.

22 This article comes from your publication. By
23 "your," I mean EMI's publication, *Entrepreneur's Business*
24 *Start-Ups*, correct?

25 A. Right.

1 Q. And so this article mentions Mr. Smith and
2 EntrepreneurPR in a positive light; is that correct?

3 A. Yes.

4 Q. Okay. And this came out in January of 1999?

5 A. Yes.

6 Q. Are you aware of when the litigation in this case was
7 filed?

8 A. No.

9 Q. So does this article -- would this article be something
10 that Mr. Smith could say promoted his business in some way?

11 A. I'm sure he would say that.

12 Q. Okay. And if, for example -- I mean, you edit the
13 magazine. If the article had the same information about a
14 Mr. Jones and his business called American Flags, that
15 person would be allowed to think that it promoted them,
16 correct?

17 A. Yes.

18 Q. Okay. All right. And so there is no question then
19 that the information that appeared in your publication about
20 the program *Entrepreneurs Only* promoted *Entrepreneurs Only*?

21 A. Yes.

22 Q. Okay. Now, I'd like to take a look at Exhibit 283.

23 MR. FINKELSTEIN: May I approach the witness with
24 the exhibit?

25 THE COURT: Yes.

1 A. No.

2 Q. What about CNNfn's *For Entrepreneurs Only*? Have you
3 ever heard of any confusion with that?

4 A. No.

5 Q. Do you know of any steps that CNNfn, in connection with
6 *For Entrepreneur's Only*, has ever taken and tried to
7 generate confusion?

8 A. No.

9 Q. Does CNNfn, its television program *For Entrepreneurs*
10 *Only*, include a magazine?

11 A. No.

12 Q. Ernst & Young's Entrepreneur of the Year Award, that
13 always is associated with Ernst & Young to your knowledge?

14 A. Yes, it is.

15 Q. They don't put out a magazine, do they?

16 A. No, they don't.

17 Q. You don't know of anything Ernst & Young has ever done
18 to try to generate confusion with Entrepreneur Media?

19 A. No.

20 Q. In fact, they always try to differentiate themselves?

21 A. They always branded it as Ernst & Young's Entrepreneur
22 of the Year Award.

23 I mean, in fact, back on the CNNfn question, CNN,
24 CNNfn which is now called CNN Money, is owned by AOL Time
25 Warner. They have a magazine for, you know, SMB business