

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

Petition for Cancellation

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

Petitioner Information

Name	American Council on Education		
Entity	Corporation	Citizenship	District of Columbia
Address	One Dupont Circle NW Washington, DC 20036 UNITED STATES		

Attorney information	Alex S. Fonoroff Kilpatrick Townsend & Stockton LLP 1100 Peachtree Street, Suite 2800 Atlanta, GA 30309 UNITED STATES afonoroff@ktslaw.com , svayner@ktslaw.com , tadmin@ktslaw.com , sfeingold@ktslaw.com , kteilhaber@ktslaw.com Phone:
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Registration Subject to Cancellation

Registration No	3117153	Registration Date	07/18/2006
Registrant:	Learnscape.com, Inc. P.O. Box 1640 Sykesville, MD 217841640 UNITED STATES		
Goods/Services Subject for Cancellation	Class 009. First Use: 20040512 First Use In Commerce: 20040512 All goods and services in the class are cancelled, namely: Downloadable computer programs and software for use in teaching and learning reading, math, social studies, science, literature and essay topics based on GED requirements, featuring lessons, pre-tests, post-tests and practice tests		

Ground for Cancellation:

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	1321397	Application Date	03/06/1984
Registration Date:	02/19/1985		
Word Mark:	GED		
Goods/Services	Class 042 First Use: 19710000 First Use In Commerce: 19710000 Educational Testing Services		

U.S. Registration No.	2613984	Application Date	06/26/2000
Registration Date	09/03/2002		
Word Mark:	GED		
Goods/Services:	Class 041 First Use: 19990000 First Use In Commerce: 19990000 EDUCATIONAL TESTING SERVICES		

U.S. Registration No.	3448412	Application Date	09/17/2007
Registration Date	06/17/2008		
Word Mark	GED TESTING SERVICE		
Goods/Services:	Class 041 First Use: 19630000 First Use In Commerce: 19630000 Educational testing servivces, namely, provding adults who did not receive a high school diploma with the opportunity to earn their jurisdiction's high school equivalency credential by passing a battery of five tests in reading, writing, mathematics, social studies, and science		

Attachments	73468985#TMSN.gif (1 page) 76076788#TMSN.jpeg (1 page) 77280949#TMSN.jpeg (1 page) ACE v. Learnscope - Petition for Cancellation (GEDPATHWAY).pdf (5 pages)
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Certificate of Service

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

Name	Sabina A. Vayner
Signature	/Sabina A. Vayner/
Date	07/13/2011

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

AMERICAN COUNCIL ON EDUCATION,)
)
Petitioner,)
) Cancellation No. _____
v.)
) Registration No. 3,117,153
LEARNSCAPE.COM, INC.,)
) TM: GEDPATHWAY
Respondent.)

PETITION FOR CANCELLATION

Petitioner American Council on Education (“ACE”) is damaged by the continued registration of the GEDPATHWAY mark that is the subject of Registration No. 3,117,153, and states the following for its Petition for Cancellation against Respondent Learnscope.com, Inc. (“Learnscope”):

1. Founded in 1918, ACE is the major coordinating body for the nation’s higher education institutions, representing more than 1,600 college and university presidents, and more than 200 related associations nationwide.

2. For decades, ACE and its licensees have used the GED trademark in connection with educational testing services, specifically in connection with a battery of tests used for the purpose of awarding a high school equivalency credential. Currently, ACE’s GED test is used by all 50 U.S. states, the District of Columbia, U.S. insular areas, Canadian provinces and territories, the U.S. military, and federal correctional institutions. Nearly 800,000 of ACE’s GED tests are taken each year.

3. ACE has used its GED trademark in commerce since long prior to Learnscope’s May 12, 2004 claimed first use of, or August 3, 2005 application to register,

the GEDPATHWAY mark, and ACE's GED trademark serves as an inherently distinctive indicator of the origin of services provided by ACE and its licensees.

4. In addition to its common law rights, ACE is the owner of three federal registrations of the GED mark or a variation thereof, as follows:

- (a) Reg. No. 1,321,397 of the GED stylized mark for "educational testing services";
- (b) Reg. No. 2,613,984 of the GED word mark for "educational testing services"; and
- (c) Reg. No. 3,448,412 of the GED TESTING SERVICE mark for "educational testing services, namely, providing adults who did not receive a high school diploma with the opportunity to earn their jurisdiction's high school equivalency credential by passing a battery of five tests in reading, writing, mathematics, social studies, and science."

(collectively, the "GED Registrations").

Affidavits have been filed in accordance with Sections 8 and 15 of the Lanham Act, 15 U.S.C. §§ 1058 and 1065, for two of the registrations, Reg. Nos. 1,321,397 and 2,613,984, and these registrations are therefore incontestable.

5. ACE expended considerable sums of money in developing consumer brand recognition for the GED mark prior to the filing date of Learnscope's application for registration of the GEDPATHWAY mark. As a result of the widespread advertising and promotion by ACE, the GED mark has acquired a high degree of recognition, fame, and distinctiveness as a symbol of the quality services offered by ACE. Consumers are familiar with and identify the GED mark with ACE and, by reason of this identification, services

associated with the GED mark are understood by the public and trade to be marketed and offered under ACE's authority and control or otherwise derived from ACE.

6. On August 3, 2005, Learnscope filed an application for registration of the GEDPATHWAY mark. The registration issued on July 18, 2006 in connection with "downloadable computer programs and software for use in teaching and learning reading, math, social studies, science, literature and essay topics based on GED requirements, featuring lessons, pre-tests, post-tests and practice tests," and was assigned Registration No. 3,117,153.

7. The goods recited in Learnscope's registration are similar and closely related to the services ACE currently provides in intrastate and interstate commerce in connection with its GED mark, and which it provided long prior to the filing date of Learnscope's application. Indeed, the identification of goods in Learnscope's registration impermissibly includes the entirety of ACE's GED trademark as part of the description (i.e., "topics based on GED requirements").

8. Learnscope's GEDPATHWAY mark is similar in sight, sound, appearance, and commercial impression to ACE's GED mark, and in fact incorporates the entirety of ACE's GED mark.

9. ACE is suffering ongoing damage as a result of the registration of Learnscope's GEDPATHWAY mark because the mark so resembles ACE's GED mark as to be likely to cause consumer confusion, mistake, and deception, particularly in view of the similarity and relatedness of the parties' goods and services. Persons familiar with the GED mark, and the services provided under the mark, are likely to believe erroneously that Learnscope's goods are those of ACE or are authorized, licensed, endorsed, or sponsored by

ACE, and registration of Learnscope's mark is therefore inconsistent with ACE's prior rights in its GED mark.

10. Because it enjoys a long history of prior use of its GED mark in both intrastate and interstate commerce, ACE is entitled to cancellation of Learnscope's registration under 15 U.S.C. §§ 1052(d) and 1064.

11. The required fee in the amount of \$300.00 is being electronically submitted with this Petition for Cancellation. The Commissioner is authorized to debit Kilpatrick Townsend & Stockton LLP's deposit account no. 11-0855 if there is any deficiency in the required fee.

ACE therefore respectfully requests that the Board sustain this proceeding in ACE's favor and cancel Registration No. 3,117,153.

This 13th day of July, 2011.

Respectfully submitted,



Alex S. Fonoroff
Sabina A. Vayner
Kilpatrick Townsend & Stockton LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4530
Telephone: (404) 815-6500
Facsimile: (404) 815-6555

Stephen Feingold
Kilpatrick Townsend & Stockton LLP
31 West 52nd Street, 14th Floor
New York, New York 10019
Telephone: (212) 775-8782
Facsimile: (212) 208-3061

Counsel for Petitioner
American Council on Education

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AMERICAN COUNCIL ON EDUCATION,)
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Petitioner,)
) Cancellation No. _____
v.)
) Registration No. 3,117,153
LEARNSCAPE.COM, INC.,)
)
Respondent.) TM: GEDPATHWAY

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the attached **Petition for Cancellation** was served on Respondent and Respondent's Attorney of Record on July 13, 2011 via first-class mail addressed to:

Learnscape.com, Inc.
P.O. Box. 1640
Sykesville, MD 21784

Neal B. Christensen, Esq.
1510 Mesa Avenue
Colorado Springs, CO 80906



Sabina A. Vayner
Attorney for Petitioner

CERTIFICATE OF TRANSMITTAL

This is to certify that a true and correct copy of the attached **Petition for Cancellation** is being filed electronically with the TTAB via ESTTA on July 13, 2011.



Sabina A. Vayner
Attorney for Petitioner