

ESTTA Tracking number: **ESTTA389762**Filing date: **01/24/2011**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	James P. Owen		
Entity	Individual	Citizenship	UNITED STATES
Address	98 San Jacinto Blvd. FSR No. 1904 Austin, TX 78701 UNITED STATES		

Correspondence information	Christopher L. Graff Pirkey Barber LLP 600 Congress Avenue Suite 2120 Austin, TX 78701 UNITED STATES cgraff@pirkeybarber.com, jmatthysse@pirkeybarber.com, kripperda@pirkeybarber.com, tmcentral@pirkeybarber.com Phone:5123225200
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**Registration Subject to Cancellation**

Registration No	3727964	Registration date	12/22/2009
Registrant	Paragon Foundation, Inc. 1209 Michigan Avenue Alamogordo, NM 88310 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 016. First Use: 2007/12/01 First Use In Commerce: 2007/12/01  
All goods and services in the class are cancelled, namely: Magazines featuring western and rural culture

**Grounds for Cancellation**

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)

**Mark Cited by Petitioner as Basis for Cancellation**

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	COWBOY ETHICS		
Goods/Services	Motivational speaking and educational services; promotional products and materials, including printed materials.		

Attachments	JPOX011 Petition For Cancellation CLG.pdf ( 6 pages )(25628 bytes )
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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 record by First Class Mail on this date.

Signature	/s/ Christopher L. Graff
Name	Christopher L. Graff
Date	01/24/2011

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

In Re Registration No. 3,727,964  
Mark: LIVING COWBOY ETHICS  
Registrant: Paragon Foundation, Inc.  
Issued: December 22, 2009

JAMES P. OWEN,

Petitioner,

v.

PARAGON FOUNDATION, INC.,

Registrant.

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Cancellation No. \_\_\_\_\_

**PETITION FOR CANCELLATION**

Petitioner James P. Owen, an individual citizen of the United States, having a residence at 98 San Jacinto Blvd. FSR No. 1904, Austin, Texas 78701, believes that he is and will continue to be damaged by Registration No. 3,727,964 (the “Registration”), and hereby petitions to cancel the same under the provisions of 15 U.S.C. § 1064. As grounds for cancellation, Petitioner asserts the following:

1. Since at least as early as 2005, Petitioner and/or his related entities have used his coined mark COWBOY ETHICS in connection with a wide variety of goods and services, including motivational speaking and educational services, as well as associated promotional products and materials, including printed materials. Petitioner’s COWBOY ETHICS goods and services celebrate the essence of traditional Western values, and the benefits of recapturing those values in today’s society. Petitioner’s book “*Cowboy Ethics, What Wall Street Can Learn from the Code of the West*” has been highly acclaimed since its first publication in 2004.

2. Over the years, Petitioner has extensively used and promoted his COWBOY ETHICS mark. Additionally, Petitioner has expended considerable effort and expense in promoting his COWBOY ETHICS mark, and the goods and services offered thereunder. As a result of such use and promotion, the COWBOY ETHICS mark has acquired a favorable reputation to consumers as an identifier and symbol of Petitioner and his goods and services. As a result of Petitioner's use and promotion, Petitioner has developed significant goodwill in the COWBOY ETHICS mark, and strong common law rights in that mark.

3. On May 20, 2009, well after Petitioner began using his COWBOY ETHICS mark, Registrant filed an application to register the mark LIVING COWBOY ETHICS for "Magazines featuring western and rural culture" in Class 16 with a claimed first-use date of December 1, 2007.

4. There is no issue as to priority, as Petitioner's use of his COWBOY ETHICS mark predates Registrant's claimed first use date of December 1, 2007.

5. The mark of the registration sought to be cancelled (LIVING COWBOY ETHICS) so nearly resembles Petitioner's COWBOY ETHICS mark as to be likely, when used in connection with the identified goods of Registrant, to cause confusion, or to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to mistakenly believe that the products Registrant offers under Registrant's LIVING COWBOY ETHICS mark are produced, sponsored, endorsed, or approved by Petitioner, or are in some way affiliated, connected, or associated with Petitioner or his products and services offered under the COWBOY ETHICS mark. Furthermore, any defect, objection, or fault found with Registrant's goods offered under the mark LIVING COWBOY ETHICS would necessarily reflect upon and seriously injure the

reputation that Petitioner has established for his COWBOY ETHICS products and services. The Registration should therefore be cancelled under 15 U.S.C. §§ 1052(d) and 1064(1).

6. If Registrant is permitted to continue to maintain the Registration sought to be cancelled, Registrant's right to use the mark of the Registration may become incontestable, and in any event, the continued existence of the Registration casts a cloud upon Petitioner's right to continue to use, register, and expand the use of his COWBOY ETHICS mark. Such Registration would thus be a source of damage and injury to Petitioner.

7. Additionally, the Registration should be cancelled because the Registrant has abandoned use of the mark as registered. In 2009, Registrant changed the name of its magazine to THE COWBOY WAY. Thus, Registrant has discontinued use of the mark LIVING COWBOY ETHICS with intent not to resume such use. Accordingly, the Registration should be cancelled pursuant to 15 U.S.C. § 1064(3).

8. Further, the Registration should be cancelled because the Registrant procured the Registration fraudulently.

9. In its application filed on May 20, 2009, under notice of Section 1001 of Title 18 of the United States Code, Registrant stated that it was the owner of the mark LIVING COWBOY ETHICS and that no other person, firm, corporation, or association had the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive. However, Registrant knew at the time of its application that Petitioner owned the mark COWBOY ETHICS, that Petitioner had the right to use COWBOY ETHICS, and that Registrant needed Petitioner's consent to use the mark LIVING COWBOY ETHICS.

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