

THIS DISPOSITION IS
NOT CITABLE AS PRECEDENT
OF THE TTAB

Mailed: January 29, 2003
Paper No. 19
BAC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Community Financial Services Association of America¹

v.

Payday Garden City, L.L.C.

Cancellation No. 29,232

David J. Hill and Alicia Brown Oliver of Chambliss,
Bahner & Stophel, P.C. for Community Financial Services
Association of America.

Ken J. Pedersen of Pedersen and Company, PLLC for Payday
Garden City, L.L.C.

Before Seeherman, Hairston and Chapman, Administrative
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

¹ On January 22, 2001, the parties filed a stipulation that due to a clerical mistake, several papers filed in this case, including the petition to cancel, erroneously refer to petitioner using the word "Consumer" instead of the correct word "Community," and that all such references are understood to refer to petitioner.

Cancellation No. 29232

Community Financial Services Association of America
(a Maryland corporation) (hereinafter petitioner) has
filed a

Cancellation No. 29232

petition to cancel a registration issued on the Principal Register to Payday Garden City, L.L.C. (an Idaho limited liability company) (hereinafter respondent) for the mark PAYDAY ADVANCES for "cash advances without credit checks up to five hundred dollars (\$500) for off-the-street customers with their post-dated checks as promissory note[s], and wire funds transfers for such customers" in International Class 36.²

Petitioner alleges that "a 'payday advance' is a service provided by Petitioner's members for which the customer pays a flat fee and receives a small amount of cash for a short period of time against the customer's next paycheck. Petitioner's members hold the customer's check for an agreed-upon time period and then deposit the check, or if the customer repays with cash, the check is returned to the customer." (Paragraph 1). Petitioner asserts as grounds for cancellation that it is a national trade association which represents the payday advance industry; that petitioner's members are currently and have been for many years engaged in providing payday

² Registration No. 2,243,154, issued on May 4, 1999 from an application filed on October 2, 1996, originally based on the assertion of a bona fide intention to use the mark in commerce, and ultimately a statement of use was accepted, with a claimed date of first use and first use in commerce of May 15, 1997. Respondent disclaimed the word "advances."

Cancellation No. 29232

advances; that petitioner's members have extensively
advertised these

services nationwide, and the public recognizes the term "payday advance" as a generic term for petitioner's members' services; that the term is a generic term for the services provided by petitioner's members and by respondent; and that petitioner believes it will be damaged by the involved registration.

In its answer respondent denied the salient allegations of the petition to cancel.

The Record/Evidentiary Objections

Before we describe what the record consists of in this case, we must address evidentiary objections made by respondent in its brief on the case. First, respondent objects to petitioner's July 27, 2001 testimony of William M. Webster, IV, a member of petitioner's board of directors, current president of petitioner association and chief executive officer of one of petitioner's members, because the testimony (i) was not taken during petitioner's testimony period, and (ii) cannot be submitted by notice of reliance as the deposition is not of an adverse party.

Upon review of the trial date schedule as set and reset in this case,³ we concur that the testimony was

³ During this review it came to the Board's attention that one of petitioner's consented motions to extend dates (filed June 8, 2001) had not been granted. That motion is hereby granted.

Cancellation No. 29232

taken outside of any of petitioner's testimony periods. See Trademark Rule 2.121(a). However, respondent's attorney attended the deposition, did not object thereto on the basis of timeliness, and cross-examined the witness. Further, respondent included the Webster testimony in the list of items (exhibit E) in respondent's own notice of reliance. In addition, one of petitioner's attorneys has stated in a declaration (submitted with petitioner's reply brief on the case) that the July 27, 2001 deposition date was ultimately chosen because of scheduling conflicts involving both parties' attorneys as well as the witness. It would have been the better practice for petitioner to either move to extend its testimony period, or to have obtained a written stipulation from respondent that the untimely taken deposition could be considered of record. But, in any event, in the circumstances herein we find that respondent waived its objection to the timeliness of petitioner's testimony deposition of William M. Webster, IV, and we consider the testimony (with exhibits) to be of record. See *Of Counsel Inc. v. Strictly of Counsel Chartered*, 21 USPQ2d 1555, footnote 2 (TTAB 1991). See also, TBMP §718.04.

Cancellation No. 29232

Further, contrary to respondent's contention, this testimony deposition is that of a party. At the time of his deposition, Mr. Webster was the president of petitioner association. Moreover, a party need not file a notice of reliance on a trial testimony deposition (party or non-party) at all. See Trademark Rule 2.125(c).

Second, respondent objects to petitioner's September 10, 2001 notice of reliance on numerous printed publications because (i) the relevance thereof has not been set forth, (ii) the publications lack foundation and authentication, and (iii) they constitute hearsay.

While it is true that petitioner did not set forth the relevance of the printed publications, this would generally be a curable defect and respondent should have raised such an objection promptly, preferably by way of motion to strike during the trial. See TBMP §718.02(b). Respondent waited to object thereto until the filing of its brief on the case. Moreover, we note that the only pleaded ground in this case is that of genericness of the registered mark, and the relevance of the involved printed publications is obvious.

With regard to foundation and authentication of these publications, petitioner provided photocopies of

Cancellation No. 29232

stories from newspapers and other printed publications, each one identified as to source and date (e.g. The Cincinnati Post, January 25, 2000, The St. Louis Post-Dispatch, September 18, 2000). These publications comply with the normal requirements. Respondent pointed to no specifics for its objections as to authentication and foundation, or to any specific publication as specifically lacking authenticity.

Respondent's hearsay objection is also not well taken with regard to these printed publications because such materials are admissible and probative for what they show on their face, not for the truth of the matters contained therein. See *Midwest Plastic Fabricators Inc. v. Underwriters Laboratories Inc.*, 12 USPQ2d 1267, footnote 5 (TTAB 1989), *aff'd* 906 F.2d 1568, 15 USPQ2d 1359 (Fed. Cir. 1990). See also, TBMP §708. Here, these publications are admissible to show uses of the phrase "payday advance(s)" within those publications, but not for the truth of the stories themselves.

Respondent's objections to petitioner's notice of reliance on printed publications are overruled.⁴

⁴ We note that exhibit No. 14 to the Webster deposition is a collection of numerous print and electronic media articles, many of which were also submitted under petitioner's notice of reliance on printed publications. Respondent's attorney cross-examined the witness with regard to these articles.

Cancellation No. 29232

The record consists of the pleadings; the file of respondent's registration; the testimony, with exhibits, of William M. Webster, IV; petitioner's notices of reliance on (i) a certified copy of respondent's Registration No. 2,243,154,⁵ (ii) respondent's answers to petitioner's interrogatory Nos. 1, 2 and 4, and the documents attached thereto⁶, and (iii) photocopies of numerous stories appearing in printed publications; and respondent's notice of reliance on (i) a photocopy of its Registration No. 2,243,154, (ii) petitioner's responses to respondent's first set of interrogatories, (iii) petitioner's supplemental responses to respondent's first set of interrogatories, (iv) petitioner's responses to respondent's document requests,⁷ (v) the July 27, 2001 testimony of William M. Webster, IV, and (vi) the August 29, 2001 testimony depositions of Shannon Fontenot and Darrell Fontenot, members of respondent (both Fontenot

⁵ Respondent's registration is of record pursuant to Trademark Rule 2.122(b), and neither party needed to submit a notice of reliance on a copy of the registration page.

⁶ Normally, documents produced in discovery may not be made of record by way of notice of reliance. See Trademark Rule 2.120(j)(3)(ii). However, inasmuch as respondent provided these documents to petitioner as part of its answers to petitioner's interrogatories, they are received into evidence. Moreover, respondent did not object thereto. See TBMP §711.

⁷ With regard to respondent's notice of reliance on petitioner's responses to respondent's document requests and the attached documents, these have also been considered because petitioner did not object thereto and treated them of record.

depositions were taken by petitioner during its testimony period).

Both parties filed briefs on the case, but neither party requested an oral hearing.

The Parties

Petitioner, Community Financial Services Association of America, is "the national trade association for the payday advance industry" (Webster dep., p. 7). According to petitioner, a "payday advance" is a service for which the customer pays a flat fee and receives a cash advance against his next paycheck. (Webster dep., exhibit No. 5.) Petitioner was formed in early 1999 by five founding members -- Advance America, National Cash Advance, Check Into Cash,

Cancellation No. 29232

Check-N-Go and A.C.E. Cash Express; and it currently has 66 members representing approximately 60% of the industry. These members operate a combined total of approximately 6500 stores nationwide. The largest provider of these services in the United States is Advance America with 1414 stores.

Petitioner disseminates educational information to local, state and federal legislators, government regulators, news media and its own members. Petitioner also produces a document titled "Best Practices for the Payday Advance Industry"⁸ requiring that members abide by these practices in order to remain a member in good standing. (One of petitioner's founding members, A.C.E Cash Express, left the association because they did not follow the "Best Practices" guidelines.) The "Best Practices" document is posted (generally appearing in a

⁸ This document specifies, for example, "full disclosure" compliance with all state and federal requirements including disclosing the cost of the transaction to the customer; "compliance" with all applicable laws, including not charging any fee not authorized by law; "truthful advertising"; "encourage consumer responsibility" by implementing procedures to inform customers of the intended use of this service; "right to rescind" giving customers the right to rescind, at no cost, a transaction on or before the close of the following business day; "appropriate collection practices" collecting past due accounts in a professional, fair and lawful manner; "no criminal action" will be threatened or pursued based on non-payment of the account; and "enforcement" by participating in self-policing of the industry through reporting violations of the "Best

size of three feet by five feet) in each member's outlet stores, and it also appears on counter cards and brochures prepared for the customers, as well as being distributed to all state and federal legislators and members of the federal regulatory community. Petitioner also provides to its members a brochure titled "The Facts About Cash Advance Services" (on which each member can fill in their company logo) to give to each customer at the time of their first transaction. (This document includes the "Best Practices" list, as well as questions and answers about the service in which "payday advance" [without quotation marks] is used to refer to the service.⁹

Petitioner attends and provides exhibits at various legislative trade shows and conferences (e.g., National Conference of State Legislators).

Practices" to petitioner and by maintaining a toll-free customer hotline in each outlet store.

⁹ For example, "Q. How often do most people use this service? A. Since a payday advance is a short-term solution to an immediate need, it is not intended for repeated use in carrying an individual from payday to payday. When an immediate need arises, we're here to help. But a payday advance is not a long-term solution for ongoing budget management."; and "Q. Getting a payday advance is such a simple and easy process, why is there so much information in the Customer Agreement? A. The Agreement you read and sign prior to receiving a payday advance is a contract between you and [name of member company, e.g., United Cash Advance]. Our contract complies with all applicable state or federal disclosure requirements. It fully outlines the terms of the payday advance transaction,...."

Cancellation No. 29232

Respondent, a limited liability company organized under the laws of Idaho, provides cash advances through a procedure whereby a customer writes a post-dated check and respondent holds the check for two weeks. Respondent also sells money orders, wires money transfers, and, at one

Cancellation No. 29232

location, respondent cashes payroll checks. (Shannon Fontenot dep., pp. 5-6). Respondent uses the mark PAYDAY ADVANCES in approximately 15 different store locations in Idaho, Colorado, Utah, Kansas and New Mexico, under various names such as Triumph, Checkmate, and Payday. (Respondent's answer to petitioner's interrogatory No. 4.)

Respondent has taken action against a few third-party uses of "payday advances," doing so in 1996 during the pendency of respondent's then application. Some of those third parties ceased use (e.g., Nationwide Finance) and some did not. Respondent did not follow up on those that did not. (Darrell Fontenot dep., pp. 5-7.)

Standing

Respondent contends that petitioner has neither pleaded nor proven standing. We disagree. Petitioner pleaded and proved that it is a national trade association representing the industry which provides short-term small loans without credit checks; that each of its members engages in this service; and that petitioner and its individual members use the words "payday advance(s)" to refer to the service whereby customers receive a short-term loan for a short period of time against the customer's next paycheck.

Cancellation No. 29232

The claimed use of a term in a generic sense (or in certain time frames under Section 14, a descriptive sense) is sufficient to impart standing to a competitor in a petition to cancel a registration based on the ground of genericness. Moreover, the Court of Appeals for the Federal Circuit [the successor court to the Court of Customs and Patent Appeals (CCPA)] has discussed the standing of a trade association representing its members in the case of *Jewelers Vigilance Committee Inc. v. Ullenberg Corp.*, 823 F.2d 490, 2 USPQ2d 2021 (Fed. Cir. 1987). See also, *Mars Money Systems v. Coin Acceptors, Inc.*, 217 USPQ 285 (TTAB 1983); and 3 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §§20:46 and 20:50 (4th ed. 2001).

Petitioner, as a trade association representing members which offer cash advances for paychecks, has shown the requisite standing in this case.

Genericness

Section 14(3) of the Trademark Act, 15 USC §1064(3), permits cancellation if the "registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered...."

The test for determining whether a designation is generic, as applied to the goods or services in the

Cancellation No. 29232

registration, turns upon how the term is perceived by the relevant public. See *Loglan Institute Inc. v. Logical Language Group, Inc.*, 962 F.2d 1038, 22 USPQ2d 1531 (Fed. Cir. 1992). Determining whether an alleged mark is generic involves a two step analysis: (1) What is the genus of the goods or services in question? and (2) Is the term sought to be registered understood by the relevant public primarily to refer to that genus of goods or services? See *H. Marvin Ginn Corporation v. International Association of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986).

Evidence of the public's understanding of a particular term may be obtained from any competent source, including direct testimony of consumers, consumer surveys, listings in dictionaries, trade journals, newspapers, and other publications. See *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551 (Fed. Cir. 1991); *In re Merrill, Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987); and *In re Northland Aluminum Products, Inc.*, 777 F.2d 1566, 227 USPQ 961 (Fed. Cir. 1985). The party asserting genericness must prove its claim by a preponderance of the evidence. See *Magic Wand Inc. v. RDB, Inc.*, supra, at 1554.

Cancellation No. 29232

The key consideration in determining genericness is the relevant public's understanding of the term. That is, do the members of the relevant public understand or use the term sought to be protected to refer to the genus of goods or services in question. In this case, the relevant public consists of persons who currently need or those who might need a short-term advance of small amounts of money.

Respondent contends that the relevant services are "cash advances"; that the ultimate question then becomes "do consumers understand PAYDAY ADVANCES® primarily to refer to 'cash advances'"; and that "a 'yes' answer requires that 'payday' be identical to 'cash'" (brief, pp. 12-13). Respondent argues that there is no equivalency between those two words; and that consumers must make a mental leap between "cash" and "payday," making respondent's mark suggestive, not generic.

Petitioner contends that a preponderance of the evidence establishes that "payday advances" has become generic for deferred presentment or cash advance services as identified in the involved registration; and that respondent has not objected to competitors' uses of the term. Petitioner references and categorizes its evidence showing that the term "payday advance(s)" is widely used

Cancellation No. 29232

by all of the following: (i) respondent's competitors in the industry to describe their services; (ii) the news media to describe the industry occupied by petitioner's members and respondent; (iii) petitioner to describe the services offered by its members; (iv) legislators and regulators in referring to the involved industry; and (v) surveys, polls and third-party reports relating to the involved service industry.

Petitioner's witness, Mr. Webster, testified regarding a group of documents (exhibit No. 21) which are all taken from various companies' web pages. The text of examples of uses of the term "payday advance(s)" from those web pages are reproduced below:

Get \$200 Fast
Welcome to the best payday loan site
on the Internet. We've been in
business since 1994 and have
successfully completed over 65,000
payday advance transactions for our
satisfied customers....
"payadvance.com";

AmeriCash Advance
Payday advances up to \$500 overnight
Need cash before payday?
Secure, fast & easy
No credit checks
No hassles
Our payday advance service can help
you with life's little emergencies...
Apply for a payday advance online via
our secure website...
Upon FAST approval notification, your
cash advance will be sent to your....

"americashadvance.com";

Pay Advances Dollar\$mart Checks
Cashed

Welcome to the Dollar\$mart web site
...Our company specializes in payday
advances, check cashing and Western
Union wire services.

We take great pride in providing fast,
friendly and hassle-free services.

This web site provides information
about our company and instructions for
applying for payday advances.

"dollarsmartinc.com";

Uca\$h™ Payday Advance

...U Cash has subsidiary divisions
which operate "traditional" payday
advance retail offices in South
Carolina and Texas.

Our recently established online agent-
supported payday advance program is
rapidly expanding through Georgia and
Texas.

We fund all payday advances from
internal resources which is testimony
of our financial strength.

"ucashpayday.com";

MaxOutLoan.com

Borrow up to \$500!

MaxOutLoan.com can help with a Cash
Loan, available overnight,...loan you
up to \$500 with a MaxOutLoan Payday
Advance.

No credit check is required!

...Click here now to apply for a new
MaxOutLoan...

"maxoutloan.com";

CheckKing Check Cashing Centers

Our Centers offer fast, friendly service, while providing a wide range of financial services. CheckKing Check Cashing Centers will cash any good check for a fee, as well as providing payday advances to the community....
"check-king.com";

ezcashnow.com
Access Payday Advance
"Online Cash Advance Center"
...Apply for a loan: Click here to apply for a payday advance loan
...More Information: Click here to find out more information about a payday loan.
"excashnow.com";

Yourfinancelink.com
Payday Advance Services
Site Links
AmeriCash Advance - Delaware-based firm provides payday advance services
Bell Financial Services - Provides payday advances in the state of California
...Cash Now - Provides payday advance services, based in Carlsbad, CA...
"yourfinancelink.com"; and

Welcome to ePacific
eP Products
eP PayCard
A Payday Advance Card
...Remember, when you get your short-term financing on an eP card, you get...
"epacific.com."

Also, there is of record much general circulation media evidence (exhibit No. 14 to Mr. Webster's

testimony, and the publications submitted under petitioner's notice of reliance) which shows generic uses of "payday advance(s)." Examples of these stories are reproduced below:

Headline: Advancing into Debt; State Needs Stricter Regulation of Payday Advance Stores

Payday advance stores do exactly what their name implies. They give short-term advances on paychecks - or "deferred entitlements" - as they're called - and assess hefty finance charges...

Although it's illegal, many shops extend the loan further, thus beginning a cycle of payday advances, with the fees eventually climbing higher than the amount of the initial loan....

"Sarasota Herald-Tribune," November 30, 1999;

Headline: In Business

...Business Agreement: Pinnacle Business Management and Fast PayCheck Advances has made an agreement with Mail Boxes Etc. to offer payday advances at participating Mail Boxes Etc.....

"The Tampa Tribune," December 13, 1999;

Headline: Landing a loan shark;

Legislature harpooned a voracious species of predatory lender

...Loan sharks have found Florida's waters hospitable, but they don't have quite as much to grin about these days. Five years after consumer advocates began pleading for help, the

Legislature finally decided to hurl a harpoon at one of the most voracious

species of predatory lenders -- the title-loan company.

...The sharks, of course, still have plenty of prey in Florida. The Legislature did nothing to curb payday advance shops, which charge up to 400 percent for short-term advances on paychecks.

"Sarasota Herald-Tribune," May 16, 2000;

Metro Desk

Supporters call it a last resort that rescues working people in sudden need of cash. Opponents call it a legal loan-sharking operation that entangles poor people in an endless web of debt. It is the "payday loan" industry, a fast-growing offshoot of the check-cashing business that is exempt from usury laws and provides advance money to its customers at annualized interest rates as high as 911%.

...One of the most controversial aspects of the payday business is that it allows customers who cannot pay off their loans to roll them over repeatedly,...

Payday advance companies deny that rollovers are common....

"Los Angeles Times," May 17, 2000;

Headline: The Pen Is Mightier; After Signing Legislation to Put an End to Consumer-Gouging by Car-Title Lenders, Gov. Jeb Bush Rightly Pointed Out the Need for Regulation of the Payday-Advance Business

...Counties and cities throughout Florida began imposing their own restrictions,...

Nothing in existing law appears to prohibit a local government's taking similar action against payday-advancers. That's why some already have jumped into action. The Longwood City Commission may consider as early

as June 5 a proposed ordinance that would slap a 30 percent annual rate on payday advances but allow a one-time \$5 fee.

...Mr. Bush should send an unmistakable signal that he's in on reforming the payday-advance business from the start....

"The Orlando Sentinel," May 19, 2000;

CNN Financial Network July 7, 2000:

Payday Loans: fast bucks

...Smith is a lawyer who has studied the payday-advance industry and is fighting it....

Other lawyers and state regulators have also taken a stand. Smith and others believe payday-advance companies will continue to proliferate....;

Headline: Payday Loans Offer Option, But at a Cost

...Typically, customers who take out a payday loan - also known as deferred deposit or payday advance - must prove they have a job and a bank checking account....

"The Idaho Statesman," August 20, 2000;

Headline: Cashing In on Cash Advances

...Supporters call payday advances a lifeline for countless Americans... Critics counter that payday advances are no bargain at all, but rather exorbitant loans that take advantage of those struggling to make ends meet.

...The only legislator to vote against the 1999 payday advance law, State Rep. Jo Carson,...

"The Arkansas Democrat-Gazette," July 16, 2000;

Headline: Money Matters

"Payday Advances" Are Step Backward

...Every place I have gone in recent months - with the possible exception of the commute to the office - I was offered a "payday advance," as if this is something I need.

...If you haven't brushed up against the payday advance phenomenon, it may be because you live in a state such as Massachusetts, where laws are considered "unfavorable" by the rapidly expanding payday advance industry.... Payday advances are sometimes known by the more demure name "deferred deposits," and the practice is popular with cash-strapped consumers. ... The state of New York, for example, recently issued a warning against payday advances, even though there were no firms known to be in the state offering them.... Payday advances are ultra-small loans, and they are increasingly popular because most banks won't loan less than \$1000.... "The Boston Globe," May 7, 2000; and

Headline: Payday loans draw a hefty price, heavy criticism

...The cost of that two-week payday advance loan is equivalent to roughly 400 annual percent percentage rate, but....

"Crain's Detroit Business," May 22, 2000.

While we acknowledge that much of the evidence is dated 1999 or later, Mr. Webster testified that a critic of the industry, the Consumer Federation of America, has used "payday advances" to describe this service since at least one year prior to the formation of petitioner in 1999. (Dep., p. 35.) Moreover, it is clear in the record that this particular industry has expanded

significantly in a very short time frame, thus accounting for the amount of media coverage in the recent past.

We note that the record includes numerous other uses of "payday advance(s)" not only by petitioner in its trade publications [e.g., petitioner's article titled "Payday Advance Services: The 'Financial Taxi' of America's Middle-Class" - (Webster dep., p. 34, and exhibit No. 16)], but also by others (e.g., in surveys and reports, and by legislators and regulators), all referring generically to the "payday advance" industry. Excerpts showing these uses are not reproduced here because our focus is on the evidence showing generic uses of the term which are available to and may be seen by the relevant purchasing public. See *Magic Wand Inc. v. RDB Inc.*, supra. Petitioner submitted ample evidence establishing the meaning of the term "payday advances" to the consumer.

Respondent has done nothing to refute this evidence. In fact, in its cross-examination of petitioner's witness William M. Webster, IV, respondent did not question the witness with specific regard to the publication and website generic uses directed to the consumer. Rather, respondent simply argues that one cannot tell from the words alone what the services are because the word

Cancellation No. 29232

"payday" is not the word "cash." However, we must consider not whether "payday" is the equivalent of "cash," but whether the term PAYDAY ADVANCES would be viewed as an alternative generic term for CASH ADVANCES. The evidence of record, some of which has been set forth in this opinion, persuades us that it would be viewed in this manner.

To the extent respondent contends that the services it offers are known as "cash advances" and therefore "payday advances" cannot be generic for such services, such an argument is unpersuasive. There can be multiple generic names for a single product or service. That is, any product or service may have many generic designations; and all of the generic names for the product or service belong in the public domain. See 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §12:9 (4th ed. 2001). It appears that the involved services may be called "deferred presentment," "payday loans," "payday advances," "paycheck loans" and the like,¹⁰ but the record clearly establishes that the

¹⁰ In explaining the use of different generic names for the same service, Mr. Webster testified that in certain states a payday advance is referred to as a payday loan or deferred deposit or deferred presentment "because of the [state] regulatory structure." (Dep., p. 59.)

term "payday advances" is one generic name for these services.

Importantly, the record also establishes that with only a few exceptions, respondent has not taken action against competitors' uses of the term "payday advances." In 1996 respondent sent a few cease and desist letters, including one to Nationwide Finance located in Garden City, Idaho (respondent's business address is in Garden City, Idaho) regarding use of the term "payday advances." Some of the entities contacted (including Nationwide Finance) agreed to cease use, but several did not so agree, and respondent took no further action. Respondent's attempts to enforce rights in its mark ended around 1996, and no action has ever been taken against petitioner. (Darrell Fontenot deposition.)

Based on this record, we find that the term "payday advances" names the services which are identified in respondent's registration, and are offered to the public by respondent as well as by the members of petitioner association. We also find that the relevant public understands the term to refer to the involved services. That is, the primary significance to the relevant public of the term "payday advances," used in connection with

Cancellation No. 29232

this type of cash advance, is as the name of the service
itself.

Cancellation No. 29232

The members of the relevant public, i.e., those people who are or may be in need of such short-term loans, would understand the term to refer to the service, and not to the source of the service.

We hold that the term "payday advances" is generic for the services identified in respondent's registration.

Decision: The petition to cancel is granted, and Registration No. 2,243,154 will be cancelled in due course.