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

Proceeding	91220956
Party	Defendant Sanjay Agarwal
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Attachments	RESPONSE TO THE MOTION FINAL.pdf(1769033 bytes)

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

UNIQUE PHOTO, INC.,	:	
	:	Mark: UUNIQUE
Opposer,	:	
v.	:	Serial Number: 79/153,014
	:	
SANJAY AGARWAL,	:	Opposition No. 91220956
	:	
Applicant.	:	

I. Response to the Motion to Compel

INTRODUCTION

I have replied in full to all discovery requests of the opposer providing very detailed answers to all of their requests for admissions, requests for documents and things and interrogatories. All responses that I have provided are fully compliant with the procedural rules and reflect fully and comprehensively all facts of the case. The opposer's allegations are based on their unwillingness to accept that the facts that were ascertained during the discovery are not in their interests and will lead to rejection of their opposition and registration of my applied-for trademark UUNIQUE. Aiming to slow down the proceedings, the opposer is filing the present motion to compel without having any substantive or procedural grounds to do so.

All my answers are coherent and complete and although most of the discovery requests were not in any manner related to the facts of the case, I provided thorough and exhaustive answers as my interest is in the prompt resolution of this case where the opposer has clearly no substantive rights

that can be opposed to my registration. All facts that were testified are correct and precise. However, whereas some of the requests were related to my opinion with regard to the legal qualification of these facts or their other interpretation, I tried to provide answers, making one general remarks which was quoted deceptively and partially by the opposer.

I did not agree to delay the remaining dates of the trial since I believe that the facts of the case are represented in sufficient details so that the case can be successfully resolved. As the opposer comprehends that these facts are not in interest of the position that it holds in the proceeding, it is trying to slow it as much as possible and thus postpone the decision. The assertion that the opposer was trying to identify if my trademark can cause likelihood of confusion based on some interrogatories addressed to me is not correct. I have no other information related to the goods that I will be protecting with my trademark but the list of goods which the board already has. The opposer is not satisfied with this response as it is evident, that there are no common goods between those that I am trying to protect with my registration and those that were already registered with the trademarks of the opposer. A comparison between these groups of goods can easily be done on the basis of the materials that were already sent to the Board and it can even be seen, that the products are no within the same class of products.

As I have provided all information that I have regarding this case, I do not see any grounds for the opposer's motion and I would like to request that you reject it.

STATEMENT OF FACTS

The facts presented by the opposer are incomplete and exaggerated. I responded to the opposer's discovery requests fully and exhaustively, which included answers to many points which were too burdensome, unreasonable or unrelated to the facts of the case. You could note that the overall number of requests has been about eighty (80) whereas my requests were only six (6) and the opposer refused to answer to them. After I received another request from the opposer where some of the questions were modified or slightly changed, and where it was proposed that we change the dates of the case in order to allow for longer discovery period. Further to that, the opposer has been complaining of various deficiencies of the responses that I provided, none of which were grounded.

This second request has been clearly sent with regard to the worsened perspectives that the applicant has in the proceeding and the opposer's willingness to slow down, suspend or in any other way to extend the time of the present opposition.

Few examples of the opposer's second discovery requests may demonstrate the opposer's unwillingness to use the discovery for genuine clarification of the facts of the case, but only for postponement and complication of the proceedings. The opposer complained about my general remark regarding the interpretation of the facts of the case that they requested me to do. In my answer to them I reassured them that I have made all possible efforts in order to provide full and comprehensive answers to all their interrogatories and requests for admissions and documents. Although the greater part of them had been too burdensome or not related to the facts of the case, I had not objected to them in the interest of providing as full and comprehensive information as possible that would lead to prompt and fair decision which we expect at the end of the proceedings. However I added that in the cases where the opposer is requesting me to provide opinion or any other form of interpretation of certain facts (and not the facts themselves), they should be aware that such interpretations do not have binding effect upon me. My opinion was that it is in the sole discretion of the Board to make the relevant conclusions based on these facts and not myself. I also added that any legal interpretations, even if they were included in the discovery responses, should not be subject to the Federal Rules of Evidence as they do not represent facts of the respective case and therefore any other party might at the times provided by the procedural laws, to submit new legal interpretation of the case with which, at the end, the Board will not be obliged to conform. I further added that on the contrary, if any such interpretation were related to the applicable law, the Board is free to take any positions that considers suitable regardless of any party's legal opinion thereof.

I also added that similar conclusion might be made in relation to other parts of the opposer's interrogatories and requests for admissions where they were seeking my opinion about future facts. I advised them that the purport of the discovery proceeding is to ascertain and clarify past and present facts that are relevant to the case and therefore, for similar reasons, I am neither bound with such opinions nor they represent any form of contract between the opposer's client and myself and they therefore can be changed at any time.

Whereas the correspondence between us is concerned, I replied to every e-mail to letter that I received by the opposer. Although the opposer is represented by few professional lawyers who claim to be specialists in the substantive and procedural laws regarding the opposition, I am participating on my own and therefore I am unable to answer to all their letters and e-mails instantaneously. However, I provided detailed answers to all of them within week or ten-day term which in my opinion is sufficiently prompt, especially whereas the volume of the materials that are discussed is taken into account.

The opposer's allegation that I did not respond to their letters of 14 January is not true. My response is attached to the present document. The opposer further claims that a settlement has been offered. This is also not true, as the opposer during the whole course of the proceedings has never sought to reach any settlement of the case. Whereas the settlement of the case would suppose mutual compromises made by both sides, the opposer's proposal was that I abandon the registration and never use the word 'unique' in the course of the prospective business in the United States.

The last offer by the opposer seems to be based on the assumption that the opposer has exclusive rights on the word UNIQUQ and any other words that simply contain the letter U for all possible products and services that might exist. Based on such views, the opposer suggested that if I abandon the application for UUNIQUE trademark, it will not challenge another trademark that I already registered in the United States – UU. However, the mark that I have already registered, neither contains the word UNIQUE nor includes any of the products protected by the opposer's trademark. On contrary, our proposals for settlement were reasonable and fair, taking into account the existing substantive law on trademark rights and the interests of both parties. However, the opposer has always been completely irresponsive to such offers, insisting that the only solution for a settlement will be if I abandon my application and do not try to sell any of those products that I am currently selling in the United Kingdom under UUNIQUE trademark regardless of the fact that the opposer has no common or any other rights in relation to those products.

ARGUMENT

DOCKET ALARM

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