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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
Correspondence Address	SANJAY AGARWAL AEGIS VISION LIMITED BOSTON RD, BOUNDARY HOUSE LONDON W7 2QE, UNITED KINGDOM zlatinzlatev@yahoo.com
Submission	Answer
Filer's Name	Sanjay Agarwal
Filer's e-mail	zlatinzlatev@yahoo.com
Signature	/Sanjay Agarwal/
Date	04/30/2015
Attachments	answer pdf.pdf(118794 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

UNIQUE PHOTO, INC., : Serial No. 79/153014

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Opposer, : Filed: 5/13/2014

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v. : For: UUNIQUE

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SANJAY AGARWAL, : Published: 2/3/2015

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Applicant. : Opposition No. \_\_\_\_\_

\_\_\_\_\_X

Commissioner for Trademarks

P.O. Box 1451

Alexandria, VA 22313-1451

**ANSWER TO NOTICE OF OPPOSITION**


Sanjay Agarwal (“Applicant”) answers Unique Photo, Inc.’s (“Opposer”) Notice of Opposition as follows:

1. The allegations of paragraph 1 related to ownership of the enlisted trademarks are admitted and no opinion because of lack of information might be formed on the allegations related to the usage of these marks.

2. The applicant has no information related to usage of the opposer's trademarks and these allegations are therefore denied. The allegations related to usage of the applicant's trademarks are denied. The applicant's trademark is not unknown to the consumers in the United States. The trademark UUnique was represented at CES 2015 organised by the applicant's US distributor Brightstar in Las Vegas – one of the biggest consumer electronic shows in the world. The applicant's trademark was also advertised in few leading American newspapers, including New York Times.
3. The allegations of paragraph 3 related to ownership of the enlisted trademarks are admitted and no opinion because of lack of information might be formed on the allegations related to the usage of these marks.
4. The Applicant has no information regarding the usage of the Opposer's trademarks and therefore the allegations of paragraph 4 are denied.
5. The allegations of paragraph 5 are denied. Apart from the usage as stated in paragraph 2 above, the Applicant's trademark has been registered in various jurisdictions, including European Union and the United Kingdom, where the trademark is well-known on the market with products sold under the Applicant's trade mark. These products are also sold in Japan, Middle East, South Africa and Australia, where UUnique trademark is used too.
6. The allegations of paragraph 6 are denied.
7. The allegations related to the list of products that the Applicant's trademark is intended to be sued for is admitted, the remaining allegations are denied.
8. The allegations of paragraph 8 are denied.
9. The allegations of paragraph 9 are denied.
10. The allegations of paragraph 10 are denied.

## AFFIRMATIVE DEFENCE



11. The trademark Uunique (reproduced as ) was registered on 8 December 2009 in the United Kingdom and soon after that in the European Union. Since its registration it has been used actively in the commercial activities in Aegis Vision Limited, incorporated and registered in England and Wales with company number 05134589 whose registered office is at Gladstone House, 77-79 High Street, Egham, Surrey TW20 9HY, including advertising campaigns, public presentations, direct sales via a special website ([www.uunique.uk.com](http://www.uunique.uk.com)) and other internet retailers.
12. For this period of time there were no disputes with any other legal entities with regard to any possible conflicts related to usage of the Applicant's trademark. The Applicant's trademark Uunique is part of the applicant's corporate identity and the applicant believes that its registration in the USA will be in best interest in the Applicant's potential customers therein.
13. The only common element of the Applicant's marks and the opposer's marks is the word 'unique'. This hypothetically can only lead to association of these marks, but the other elements that distinguish them prevent any similarity.
14. The mere association of two marks does not necessarily lead to similarity of the marks and therefore cannot in any cases cause 'confusion'. The mere 'association' of two marks by virtue of their 'analogous semantic content' is insufficient ground for concluding that there is 'similarity' or even 'confusion' between them.
15. 'Likelihood of association' is not an alternative to 'likelihood of confusion' but a subcategory of it. 'Association' of marks is not therefore an infringement or a bar to registration in the absence of confusion.

16. The fact that some of the marks that are enlisted in the opposition contain the word ‘unique’ does not in itself lead to confusion. Even though the marks contain the word ‘unique’, the opposer does not prove that this leads at least to association of the marks.
17. The availability of common word in two marks is not considered to be hindering condition for their registration as it is not leading to association of the marks or to further consequences like similarity. This can be best demonstrated by the fact that so many marks having the word ‘unique’ have already been registered in the United States and no grounds for specific treatment of the mark Uunique can be substantiated on this ground.
18. The Opposer’s allegations of likelihood of confusion are not proved in any of its elements. The connotation of the Applicant’s mark is opposite to the one that can be implied from the other marks: the presence of the first letter ‘U’ for the pronoun “you” in the mark specifies the uniqueness of the consumers rather than the uniqueness of the products. Therefore there is even no semantic similarity between the Applicant’s mark and the marks in the opposition. Without any similarity of the marks no conclusion about likelihood of confusion can be drawn.
19. Furthermore, comparison of marks should be made from the standpoint of the average relevant consumer. Global appreciation of marks must be based on the overall impression given by them, bearing in mind their distinctive and dominant components. We think that the perception of marks in the mind of the average consumer of the relevant goods or services plays a decisive role in the global appreciation of the likelihood of confusion, since the average consumer normally perceives a mark as a whole and does not proceed to analyse its various elements.
20. The Applicant’s mark in that respect has no similar elements in its global appreciation with the other marks enlisted in the opposition. Its graphical and semantic perception is

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