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

Proceeding	91120453
Party	Defendant CHARLES BROWNING WILSON
Correspondence Address	Robert Steckman The Law office of Robert Steckman 111 John Street, Suite 800 New York, NY 60606 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	Robert Steckman
Filer's e-mail	robert@steckmanlaw.com
Signature	/Robert Steckman/
Date	10/04/2007
Attachments	Applicants Second Cross-Examination on written questions.pdf (8 pages) (87570 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIALS AND APPEALS BOARD

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HEARST COMMUNICATIONS, INC. and : Opposition No. 91120453
HEARST MAGAZINES PROPERTY, INC. :
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Opposers, :
 :
v. :
 :
CHARLES BROWNING WILSON :
 :
Applicant :
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**APPLICANT’S SECOND WRITTEN CROSS-EXAMINATION
TO OPPOSERS HEARST COMMUNICATIONS, INC. and
HEARST MAGAZINES PROPERTY, INC.**

Applicant CHARLES BROWNING WILSON (“Cosmo” or “Applicant”) hereby requests, pursuant to order of the Board, dated, April 4, 2006, that Opposers, HEARST COMMUNICATIONS, INC. and HEARST MAGAZINES PROPERTY, INC. (collectively “Hearst”) answer the following questions fully and separately in writing and under oath on or before November 19, 2007.

DEFINITIONS AND INSTRUCTIONS

1. As used herein, the term "person" as well as pronouns referring thereto shall include juristic persons as well as natural persons.
2. As used herein, the term "document" includes any tangible thing from or on which information can be stored, recorded, processed, transmitted, inscribed, or memorialized in any way by any means regardless of technology or form, including, but not limited to, any and all digital, tape, film, fiche, magnetic and/or optical media.
3. “Applicant” means and shall refer to Applicant herein, Charles Browning “Cosmo” Wilson (“Cosmo”).

4. "Applicant's Mark" means and shall refer to COSMO, COSMO.COM and any mark similar thereto used by Applicant.

5. "Applicant's Goods and Services" mean and shall refer to Applicant's website and the service thereof under the designation COSMO, COSMO.COM or any mark similar thereto.

6. "Opposers" means and shall refer to the Opposers herein, HEARST COMMUNICATIONS, INC. and HEARST MAGAZINES PROPERTY, INC. (hereinafter collectively referred to as "Hearst"), each of its predecessors in interest, associates, predecessor and each of its members, officers, directors, employees, agents and attorneys, and each person acting on its behalf or under its control.

7. "Opposer's Mark" means and shall refer to U.S trademark registration No. 1843656, and any mark similar thereto used by Opposers.

8. "Opposer's Goods or Services" means and shall refer to Opposers goods, products or services sold or offered for sale under the designation COSMO, or any mark similar thereto.

9. Where a person required to be identified is a juristic person, state, to the extent known, its full name, principal place of business, present or last known address, and state and date of incorporation or where authorized to do business, if any.

10. Where a person required to be identified is a natural person, state the person's full name, present or last known address, present or last known title and place of employment, and present or last known business address.

11. Where a product and/or service is required to be identified, state the following information:

- (a) the trade name, trademark, and/or brand name of the product or service under which the product and/or service is sold or offered for sale or

otherwise distributed;

- (b) the generic name of the product and/or service;
- (c) the inclusive dates during which the product and/or service has been has been sold and/or offered for sale.

12. Any word written in the singular shall be construed as plural or vice-versa when necessary to facilitate the answer to a question.

13. As used herein, the terms "all" and "each" shall be construed as each and all to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

14. As used herein, the connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request **all** responses that might otherwise be construed to be outside of its scope.

15. As used herein, the term "date" means the exact date if known or, if not known, the approximate date.

16. As used herein, the term "communication" means any form of communication whether written, oral, digital, or otherwise including but not limited to letters, memoranda, telephone memoranda, notes, electronic mail, inter-office memoranda, telephone conversations, conference discussions, meeting minutes, and any other form of communication between two or more parties.

17. Where an instance is required to be identified, state:

- (a) the identity of each person who participated in or who has knowledge of the instance;
- (b) the circumstances surrounding the instance; and

(c) the date or inclusive dates during which the instance occurred.

18. Where a document is required to be identified, state:

(a) The nature of the document (e.g. — but not limited to — letter, e-mail, memorandum, note, phone log, spread sheet, etc.)

(b) The writer of the document;

(c) The recipient of the document;

(d) The date the document was created;

(e) The date the document was transmitted;

(f) The location of the document.

18. With respect to each question to which an objection is made, state the specific grounds of the objection and answer any portion of the question which does not fall within the stated objection.

19. In answering these questions, Opposer is requested to furnish all information, however obtained, which is available to Opposer, and information known by or in Opposer's possession or in the possession of Opposer's agents and its attorneys.

20. For the convenience of the Board and counsel, it is requested that each question be set forth immediately preceding the answer thereto.

APPLICANT'S QUESTIONS TO OPPOSERS

1. Given that Opposers have explicitly abandoned their claim of any possible confusion between Applicant's Mark and USPTO Reg No 1843656.¹ And further given that Opposers do not have any currently valid PTO trademark registrations for the specific phrase "Cosmo", please identify all information relevant to any claim by Opposers that Applicant's mark is likely to cause confusion with Opposers' trademark Reg. No. 1,685,161.
2. Given that Opposers have explicitly abandoned their claim of any possible confusion between Applicant's Mark and USPTO Reg No 1843656. And further given that Opposers do not have any currently valid PTO trademark registrations for the specific phrase "Cosmo", please identify all information relevant to any claim by Opposers that Applicant's mark is likely to cause confusion with Opposers' trademark Reg. No. 1,911,389.
3. Given that Opposers have explicitly abandoned their claim of any possible confusion between Applicant's Mark and USPTO Reg No 1843656. And further given that Opposers do not have any currently valid PTO trademark registrations for the specific phrase "Cosmo", please identify all information relevant to any claim by Opposers that Applicant's mark is likely to cause confusion with Opposers' trademark Reg. No. 1,855,579.
4. Given that Opposers have explicitly abandoned their claim of any possible confusion between Applicant's Mark and USPTO Reg No 1843656. And further given that Opposers do not have any currently valid PTO trademark registrations for the specific phrase "Cosmo", please identify all information relevant to any claim by Opposers that Applicant's mark is likely to cause confusion with Opposers' trademark Reg. No. 2,235,977.
5. Given that Opposers have explicitly abandoned their claim of any possible confusion between Applicant's Mark and USPTO Reg No 1843656. And further given that Opposers do not have any currently valid PTO trademark registrations for the specific phrase "Cosmo", please identify all information relevant to any claim by Opposers that Applicant's mark is likely to cause confusion with Opposers' trademark Reg. No. 2,304,917.
6. Opposers recently filed USPTO application Serial No. 77137373, on March 26, 2007, which claims first use of "COSMO" on March 29, 2002, in Int'l class No. 41, and contains a statement of use, as follows: "Publication of Electronic Magazine Portions and Publication of Electronic Magazine Articles and Illustrative Materials in the Fields of Personal Relationships, Beauty and Fashion, Health and Fitness, and Personal Hygiene". Please indicate how Opposers can claim first use in commerce of the phrase "Cosmo" in Int'l class 41 in the herein proceeding prior to Applicant's use, while simultaneously certifying to the USPTO in their application Serial No. 77137373 that their first use of commerce of "Cosmo" in Int'l class 41 was after Applicant's first use.

¹ See Opposers' response to question #9 of Applicant's written cross-examination, question which states that "Opposers do not maintain that there is a likelihood of confusion between that mark [Reg No 1843656] for those goods and Applicant's mark"

7. Paragraph 4 of the Second Declaration of Stephen Rodgers, states that “Applicant is correct that this registration lapsed in 2001, HCI has at no point discontinued use of marks consisting in whole or in part of the word COSMO, much less abandoned its trademark rights to the world.” . Please explain why Opposer has failed to file a petition to renew such mark and/or any of the other marks previously owned by Opposers for the exact phrase “Cosmo” which have been canceled by the USPTO and/or abandoned by Opposers, and instead, are attempting to register a new trademark for “Cosmo” under serial Nos. 77195652 and 77137373.
8. Paragraph 8 of the Second Declaration of Stephen Rodgers, states that: “[T]he cosmo.com domain was not in use by Applicant’s predecessor at the time of the articles publication. Consequently, there would have been no reason for HCI or HMPI to have challenged the registration of the domain at that time”. Please explain the basis for Opposer’s assertion that the identity of the then owner of the cosmo.com mark in or about 1996 or that owners use of the mark was relevant to any standards applicable to Opposers potential claims in a hypothetical ICANN proceeding against such predecessor owner of the cosmo.com uniform resource locator.
9. Given Opposers failure to commence any action pursuant to the Lanham Act and/or any ICANN proceeding seeking to obtain ownership of the cosmo.com uniform resource locator both prior and after Applicant’s obtaining ownership of cosmo.com, please identify how Opposers’ rights to any of Opposers’ unregistered marks should be considered as a basis for any claim that such unregistered marks are superior to Applicant’s Mark.
10. Please identify the date of first use of each and every unregistered mark identified in paragraphs 5 and 6 of the Second Declaration of Stephan Rodgers as well as any other purported unregistered marks which Opposers may claim are likely to cause confusion if Applicant’s mark proceeds to registration.
11. Please identify all efforts by Opposers’ to direct its customers away from cosmo.com and to utilize its cosmopolitan.com, cosmomag.com or cosmogirl.com uniform resource locators.

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12. Identify all goods currently sold by Opposers which utilize the exact phrase “Cosmo” in any manner.
13. Identify all services currently rendered by Opposers which utilize the exact phrase “Cosmo” in any manner.
14. Please identify the relevance of paragraphs 9 - 12 of Second Declaration of Stephen Rodgers given that Applicant has already admitted that he did not initiate, but has admitted that he personally edited his Wikipedia page.
15. Identify all instances where Opposers have made edits, alterations and/or any changes to any Wikipedia page referencing any unregistered mark identified by Opposers in this action.

Dated: New York, New York
October 3, 2007

Respectfully submitted,

LAW OFFICE OF ROBERT STECKMAN

/s/
By: Robert M. Steckman
Attorney for Applicant
111 John Street, Suite 800
New York, NY 10038
(212) 313-9898

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It is hereby certified that a true copy of the within Applicant's Second Written Cross-examination To Opposers Hearst Communications, Inc. and Hearst Magazines Property, Inc., was served upon counsel for Opposers on October 4, 2007, by first class mail, postage prepaid, at the address set forth below:

Ted Davis
Kilpatrick Stockton, LLP
Attorneys for Opposers
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

Dated: New York, New York
October 4, 2007

_____/s/_____
Robert M. Steckman