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Confirmation by U.S. Mail

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[redacted]

08-29-2006
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #

Re: Copy of Documents Filed in Various **"KLOVE"** Matters
Opp. No. 91/122,045 / Cancellation No. 92/042,649

Dear Ms. Goodman:

Further to our conversation earlier this year, please find attached a copy of the pleading filed jointly by all of the parties involved in six matters pending in the Trademark Office, including two before the Board. As we discussed, one of those matters (91122045) was assigned to you; the other (92042649) is before Mr. Mermelstein, who is being copied on this communication.

The intent of the parties is to institute, consolidate, and resolve any concurrent use proceedings that are needed so as to grant the parties concurrent rights in and to the mark K-LOVE (including the phonetic equivalents thereof, such as KLOVE, KLOV, and KLUV) as relates to radio broadcasting and related goods and services. The parties have already agreed to divide their rights based upon a division of geography, and a confidential settlement agreement setting forth that agreement, which agreement includes provisions designed to help prevent any consumer confusion, has already been executed. However, as that document contains confidential information and must be submitted under seal, it is my understanding that it cannot be filed with the Board until the concurrent use proceedings have been initiated and a protective order is put in place. If you wish to see a copy now, however, please let me know.

If there is anything further that the Board requires so as to initiate and resolve the proper proceedings (pending, of course, receipt of the executed concurrent use agreement), please let

me know and I will coordinate efforts with the other parties' counsel, who are also being copied on this letter. Thank you for your assistance in this matter.

Best Regards,

KENYON & KENYON LLP

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Cc: David M. Mermelstein
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625940:11136/41

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

EDUCATIONAL MEDIA FOUNDATION *Opposer,* v. **UNIVISION RADIO, INC.,** (formerly HISPANIC BROADCASTING CORPORATION dba UNIVISION RADIO) *Applicant.*	Opposition No.: 91/122,045 Mark: KLOVE Serial No.: 75/430,440 Filing Date: February 6, 1998
UNIVISION RADIO, INC. (formerly HISPANIC BROADCASTING CORPORATION dba UNIVISION RADIO) *Petitioner,* v. **TEXAS CBS RADIO BROADCASTING L.P.** (formerly known as INFINITY BROADCASTING CORPORATION OF DALLAS), *Respondent.*	Cancellation No.: 92/042,649 Mark: KLUV Reg. No.: 2,326,583 Filing Date: April 20, 1999 Issue Date: March 7, 2000
In re: Application Serial No. 75/771,362 Applicant: **Educational Media Foundation**	Mark: K-LOVE Filing Date: August 9, 1999
In re: Application Serial No. 78/159,861 Applicant: **Univision Radio, Inc.**	Mark: KLOVE & Design Filing Date: April 30, 2002
In re: Application Serial No. 76/525,622 Applicant: **Univision Radio, Inc.**	Mark: KLOVE Filing Date: June 18, 2003
In re: Application Serial No. 76/525,621 Applicant: **Univision Radio, Inc.**	Mark: KLOVE & Design Filing Date: June 18, 2003

MOTIONS ON CONSENT BY ALL PARTIES

(1) AMEND ALL PENDING APPLICATIONS TO APPLICATIONS SEEKING CONCURRENT USE REGISTRATIONS;

(2) DISMISS PENDING OPPOSITION AND CANCELLATION PROCEEDINGS IN FAVOR OF CONSOLIDATED CONCURRENT USE PROCEEDING;

(3) AMEND TITLE OF PROCEEDING TO REFLECT THE CURRENT NAMES OF THE PARTIES; and

(4) RESOLVE ALL CONCURRENT USE PROCEEDINGS BASED UPON AN AGREED-UPON DIVISION OF GEOGRAPHY

Opposer/Applicant **Educational Media Foundation ("EMF")** (Opposer in Opposition No. 91/122,045; Applicant in Serial No. 75/771,362); Applicant/Petitioner, **Univision Radio, Inc. (formerly "Hispanic Broadcasting Corporation") ("Univision Radio")** (Applicant in Opposition No. 91/122,045; Petitioner in Cancellation No. 92/042,649; Applicant in Serial Nos. 76/525,621, 76/525,622, and 78/159,861); and Registrant/Respondent **Texas CBS Radio Broadcasting L.P. (formerly "Infinity Broadcasting Corporation of Dallas") ("CBS Radio")** (Registrant of U.S. Reg. No. 2,326,583 and Respondent in Cancellation No. 92/042,649), all hereby consent to the following actions to facilitate the initiation, consolidation, and resolution of current use proceedings regarding the granting of concurrent rights in and to the mark K-LOVE (including the phonetic equivalents thereof, such as KLOVE, KLOV, and KLUV) among the parties as relates to radio broadcasting and related goods and services based upon an agreed-upon division of geography.

Each motion is set forth in more detail below.

MOTION TO AMEND SERIAL NO. 75/771,362

Applicant, **EMF**, respectfully requests pursuant to Trademark Rules 2.42 and 2.73 that its Application Serial No. 75/771,362 be amended to one seeking a concurrent use registration. Specifically, **EMF** requests that the application be amended by inserting therein information relating to the area of use for which **EMF** seeks registration and the exceptions to **EMF's** right to exclusive use of the mark as follows:

> "Applicant claims the right to exclusive use of the mark for the area comprising the entire United States and its territories and possessions, with the exception of the follow counties in California: Los Angeles County, Orange County, Ventura County, Inyo County, San Bernardino County, Eastern Portions of Kern County, Western Portions of Riverside County, and San Diego County; and the following counties in Texas: Houston County, Trinity County, Polk County, Tyler County, Jasper County, Newton County, Orange County, Jefferson County, Hardin County, Chambers County, Liberty County, San Jacinto County, Walker County, Madison County, Brazos County, Grimes County, Burleson County, Washington County, Fayette County, Colorado County, Lavaca County, Jackson County, Wharton County, Matagorda County, Calhoun County, Austin County, Waller County, Montgomery County, Harris County, Fort Bend County, Brazoria County, Galveston County, Cooke County, Jack County, Wise County, Denton County, Collin County, Fannin County, Lamar County, Red River County, Hunt County, Delta County, Hopkins County, Palo Pinto County, Parker County, Tarrant County, Dallas County, Rockwall County, Kaufman County, Rains County, Van Zandt County, Erath County, Hood County, Johnson County, Ellis County, Henderson County, Comanche County, Hamilton County, Bosque County, Somervell County, Hill County, Navarro County, Freestone County, and Anderson County."

EMF seeks registration of the above-identified mark subject to a concurrent use proceeding with the following parties, which are known to be exceptions to **EMF's** right to exclusive use of the mark in commerce:

1. **UNIVISION RADIO, INC. ("Univision Radio")**
3102 Oak Lawn Avenue; Suite 215
Dallas, Texas 75219

Applications: K-LOVE (Serial No. 75/430,440)
KLOVE & Design (Serial No. 76/525,621)
KLOVE (Serial No. 76/525,622)
KLOVE & Design (Serial No. 78/159,861)

It is believed that Univision Radio has used the mark KLOVE (or K-LOVE) in connection with the provision of "radio broadcasting services" and related goods and services in certain territories in the United States since at least as early as September 1974.

It is further believed that Univision Radio, either by itself or through its licensee(s), is presently using the mark in connection with the provision of such goods and services in the Los Angeles, California; San Diego, California; and Houston, Texas "Total Survey Areas" as those areas are defined by third-party Arbitron, Inc., and that the mark is being used on promotional material, during over-the-air radio broadcasts, and in other ways customary to the trade.

2. **TEXAS CBS RADIO BROADCASTING L.P. ("CBS Radio")**
1515 Broadway
New York, New York 10036

Registration: KLUV (Reg. No. 2,326,583)

It is believed that CBS Radio has used the mark KLUV (or K-LOVE) in connection with the provision of "radio broadcasting services" and related goods and services in certain territories in the United States since at least as early as January 27, 1984.

It is further believed that CBS Radio, either by itself or through its licensee(s), is presently using the mark in connection with the provision of such goods and services in the Dallas, Texas "Total Survey Areas" as that area is defined by third-party Arbitron, Inc., and that the mark is being used on promotional material, during over-the-air radio broadcasts, and in other ways customary to the trade.

EMF is not aware of any other parties making concurrent lawful use of the subject mark, and to the extent required under any applicable Trademark Office or Board rules, **Univision Radio** and **CBS Radio** both consent to the requested amendment. Further, as required pursuant to Trademark Rule 4.38, a declaration, by an officer of **EMF**, verifying the facts set forth in this amendment, is included below:

> The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; except as otherwise set forth herein with respect to the concurrent users named as exception to applicant's right to exclusive use of the mark in commerce, to the best of his/her knowledge and belief no other person, firm, corporation, or association has 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; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Dated: 7-24-06

Richard Jenkins
President
Educational Media Foundation

MOTION TO AMEND SERIAL NO. 75/430,440

MOTION TO AMEND SERIAL NO. 78/159,861

MOTION TO AMEND SERIAL NO. 76/525,622

MOTION TO AMEND SERIAL NO. 76/525,621

Applicant, **Univision Radio**, respectfully requests pursuant to Trademark Rules 2.42 and 2.73 that its Application Serial Nos. 75/430,440 (which is the application that is the subject of Opposition No. 91/122,045), 78/159,861, 76/525,622, and 76/525,621 be amended to ones seeking concurrent use registrations. Specifically, **Univision Radio** requests that the applications be amended by inserting into each application information relating to the area of use for which **Univision Radio** seeks registration and the exceptions to **Univision Radio's** right to exclusive use of the mark as follows:

> "Applicant claims the right to exclusive use of the mark for the area comprising the follow counties in California: Los Angeles County, Orange County, Ventura County, Inyo County, San Bernardino County, Eastern Portions of Kern County, Western Portions of Riverside County, and San Diego County; and the following counties in Texas: Houston County, Trinity County, Polk County, Tyler County, Jasper County, Newton County, Orange County, Jefferson County, Hardin County, Chambers County, Liberty County, San Jacinto County, Walker County, Madison County, Brazos County, Grimes County, Burleson County, Washington County, Fayette County, Colorado County, Lavaca County, Jackson County, Wharton County, Matagorda County, Calhoun County, Austin County, Waller County, Montgomery County, Harris County, Fort Bend County, Brazoria County, and Galveston County.

Univision Radio seeks registration of the above-identified marks subject to a concurrent use proceeding with the following parties, which are known to be exceptions to **Univision Radio's** right to exclusive use of the marks in commerce:

1. **EDUCATIONAL MEDIA FOUNDATION ("EMF")**
5700 West Oaks Boulevard
Rocklin, California 95765

Application: K-LOVE (Serial No. 75/771,362)

It is believed that EMF has used the mark K-LOVE (or KLOV) in connection with the provision of "radio broadcasting services" and related goods and services in certain territories in the United States since at least as early as October 1988.

It is further believed that EMF, either by itself or through its licensee(s), is presently using the mark in connection with the provision of such goods and services in Alaska, Arizona, Arkansas, California, Colorado, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, and that the mark is being used on promotional material, during over-the-air radio broadcasts, and in other ways customary to the trade.

2. **TEXAS CBS RADIO BROADCASTING L.P. ("CBS Radio")**
1515 Broadway
New York, New York 10036

Registration: KLUV (Reg. No. 2,326,583)

It is believed that CBS Radio has used the mark KLUV (or K-LOVE) in connection with the provision of "radio broadcasting services" and related goods and services in certain territories in the United States since at least as early as January 27, 1984.

It is further believed that CBS Radio, either by itself or through its licensee(s), is presently using the mark in connection with the provision of such goods and services in the Dallas, Texas "Total Survey Areas" as that area is defined by third-party Arbitron, Inc., and that the mark is being used on promotional material, during over-the-air radio broadcasts, and in other ways customary to the trade.

Univision Radio is not aware of any other parties making concurrent lawful use of the subject mark, and to the extent required under any applicable Trademark Office or Board rules, **EMF** and **CBS Radio** both consent to the requested amendment. Further, as required pursuant to Trademark Rule 4.38, a declaration, by an officer of **Univision Radio**, verifying the facts set forth in this amendment, is included below:

> The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; except as otherwise set forth herein with respect to the concurrent users named as exception to applicant's right to exclusive use of the mark in commerce, to the best of his/her knowledge and belief no other person, firm, corporation, or association has 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; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Dated: 8/10/06

Gary Stone
President
Univision Radio, Inc.

MOTION TO DISMISS PENDING OPPOSITION AND CANCELLATION PROCEEDINGS IN FAVOR OF A CONSOLIDATED CURRENT USE PROCEEDING

EMF and **Univision Radio** each consent to the dismissal, without prejudice, of Opposition No. 91/122,045 in favor of the institution of a concurrent use proceeding regarding the rights of the parties in and to the mark K-LOVE.

Univision Radio and **CBS Radio** each consent to the dismissal, without prejudice, of Cancellation No. 92/042,649 in favor of the institution of a concurrent use proceeding regarding the rights of the parties in and to the mark K-LOVE.

EMF, **Univision Radio**, and **CBS Radio** all consent to the consolidation for all purposes of any concurrent use proceedings that may be initiated by the Board.

MOTION TO AMEND TITLE OF CONSOLIDATED CURRENT USE PROCEEDING TO REFLECT THE CURRENT NAMES OF THE PARTIES

Pursuant to TBMP Section 512.02, **Univision Radio** requests that the title of any separate or consolidated concurrent use proceeding that the Board may institute reflect the movant's current name—namely, "Univision Radio, Inc."[1]

Through a series of corporate transactions, Hispanic Broadcasting Corporation (Applicant in Opposition No. 91/122,045) is now known as "Univision Radio, Inc.," effective October 31, 2003. *See, e.g.* Reel 2889/ Frame 0889; Reel 2889 / 0919. As such, **Univision Radio** requests that the title of any current or future Board proceeding concerning the company be changed to reflect the new name.

[1] By Order of June 2, 2006, the Board already substituted "Texas CBS Radio Broadcasting L.P. as Defendant in Cancellation No. 92/042,649, thus making a further motion on this point unnecessary.

REQUEST THAT ALL CONCURRENT USE PROCEEDINGS BE RESOLVED BASED UPON AN AGREED-UPON DIVISION OF GEOGRAPHY

So as to expedite the conduct of any concurrent use proceedings that the Board may institute, and to settle in advance any potential issues that may arise regarding the ownership or use of the respective mark(s) in question, **EMF**, **Univision Radio**, and **CBS Radio** will submit (under seal) a copy of an executed confidential settlement agreement.

In pertinent part, the Agreement provides (and the parties agree) that each party shall have exclusive rights in and to the K-LOVE mark (including the phonetic equivalents thereof, such as KLOVE, KLOV, and KLUV) in their respective territories, subject to the additional limitations on use set forth in the Agreement. The Agreement further provides that the parties will cooperate to address any instances of actual confusion or mistake that may arise out of each party's respective use of its mark(s), and contains further limitations (such as on advertising) to help prevent any such confusion. As such, the parties submit that the Agreement, which will be submitted once a protective order is in place, provides a proper basis upon which concurrent rights may be awarded, without the risk of such concurrent use leading to consumer confusion.

More specifically, the parties have agreed to the following segregation of rights based upon a division of geography, which the parties submit is appropriate given the nature of the radio broadcasting services that are the subject of these proceedings:

EMF's Territory:

> "The entire United States and its territories and possessions, with the exception of the follow counties in California: Los Angeles County, Orange County, Ventura County, Inyo County, San Bernardino County, Eastern Portions of Kern County, Western Portions of Riverside County, and San Diego County; and the following counties in Texas: Houston

County, Trinity County, Polk County, Tyler County, Jasper County, Newton County, Orange County, Jefferson County, Hardin County, Chambers County, Liberty County, San Jacinto County, Walker County, Madison County, Brazos County, Grimes County, Burleson County, Washington County, Fayette County, Colorado County, Lavaca County, Jackson County, Wharton County, Matagorda County, Calhoun County, Austin County, Waller County, Montgomery County, Harris County, Fort Bend County, Brazoria County, Galveston County, Cooke County, Jack County, Wise County, Denton County, Collin County, Fannin County, Lamar County, Red River County, Hunt County, Delta County, Hopkins County, Palo Pinto County, Parker County, Tarrant County, Dallas County, Rockwall County, Kaufman County, Rains County, Van Zandt County, Erath County, Hood County, Johnson County, Ellis County, Henderson County, Comanche County, Hamilton County, Bosque County, Somervell County, Hill County, Navarro County, Freestone County, and Anderson County."

Univision Radio's Territory:

"The follow counties in California: Los Angeles County, Orange County, Ventura County, Inyo County, San Bernardino County, Eastern Portions of Kern County, Western Portions of Riverside County, and San Diego County; and the following counties in Texas: Houston County, Trinity County, Polk County, Tyler County, Jasper County, Newton County, Orange County, Jefferson County, Hardin County, Chambers County, Liberty County, San Jacinto County, Walker County, Madison County, Brazos County, Grimes County, Burleson County, Washington County, Fayette County, Colorado County, Lavaca County, Jackson County, Wharton County, Matagorda County, Calhoun County, Austin County, Waller County, Montgomery County, Harris County, Fort Bend County, Brazoria County, and Galveston County."

CBS Radio's Territory:

"The following counties in Texas: Cooke County, Jack County, Wise County, Denton County, Collin County, Fannin County, Lamar County, Red River County, Hunt County, Delta County, Hopkins County, Palo Pinto County, Parker County, Tarrant County, Dallas County, Rockwall County, Kaufman County, Rains County, Van Zandt County, Erath County, Hood County, Johnson County, Ellis County, Henderson County, Comanche County, Hamilton County, Bosque County, Somervell County, Hill County, Navarro County, Freestone County, and Anderson County."

The parties therefore request that any registration issued to any party be issued with (or, as in the case of U.S. Registration No. 2,326,583, be amended to include)

statements identifying the limited nature of the registered rights and cross-referencing the other parties' respective concurrent registrations.

CONCLUSION

For the reasons set forth above, the parties respectfully request they be granted concurrent rights in and to the mark K-LOVE (including all equivalents thereof) as relates to radio broadcasting and related goods and services based upon the agreed-upon division of geography. If the Board has any questions or recommendations regarding any of the above proceedings, it is invited to contact the undersigned representatives.

Respectfully submitted,

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statements identifying the limited nature of the registered rights and cross-referencing the other parties' respective concurrent registrations.

CONCLUSION

For the reasons set forth above, the parties respectfully request they be granted concurrent rights in and to the mark K-LOVE (including all equivalents thereof) as relates to radio broadcasting and related goods and services based upon the agreed-upon division of geography. If the Board has any questions or recommendations regarding any of the above proceedings, it is invited to contact the undersigned representatives.

Respectfully submitted,

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