7412/87668

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

Unify Corporation,	)	Opposition No. 91,150,~~440~~ 466
	)	Serial No. 76/098,180
Opposer	)	
	)	I hereby certify that this paper is being deposited with the United
v.	)	States Postal Service as Express Mail in an envelope addressed to
	)	Assistant Commissioner for Trademarks, 2900 Crystal Drive,
Sinpag International, Inc.,	)	Arlington, VA 22202-3513, on this date: June 14, 2002.
	)	
Applicant.	)	Express Mail No. EL 868817987 US

ANSWER TO NOTICE OF OPPOSITION

Applicant, Sinpag International, Inc. (hereinafter "Applicant"), having a principal place of business in Wilmington, Delaware, for its answer to the Notice of Opposition filed by Unify Corporation (hereinafter "Opposer") against registration of Applicant UNIFIED COLLABORATION application, Serial No. 76/098,180, filed July 27, 2000, and published in the *Official Gazette* of the United States Patent and Trademark Office, October 23, 2001 issue, pleads and avers as follows:

1. [sic, no number in original] Applicant filed Appl. Ser. No. 76/098,180 for the "UNIFIED COLLABORATION" mark on July 27, 2000, in connection with "computer software for providing a customizable suite of multi-access services, namely, providing wide application protocols and internet access for community sites, vertical portals, networked computers, individual computers, and application service providers; computer software for providing synchronized personal, group, and shared calendar services, namely, project planning management, event invitation services, namely, deadline control, meeting flagging and event organization back-up services, polling and management services, namely, data survey compilation and exploitation, and meeting and event scheduling; computer software for providing individual, group, and online address books; computer software for providing personal online file storage and file sharing; computer software for providing project management and virtual offices for business communities, and group messaging for clubs" in International Class 9. Applicant's mark was published for opposition in the Official Gazette at TM 224 on October 23, 2001 (copy annexed as Exhibit A). Opposer filed a thirty day request for extension of time to file a Notice of Opposition, which was granted. Opposer now has until December 22, 2001 to file this Notice of Opposition.

Answering paragraph 1 of the Notice of Opposition, Applicant admits that on July 27,

2000, Applicant filed an application with the U.S. Patent and Trademark Office that was assigned Serial No. 76/098,180. Applicant admits that the mark as published in the Official Gazette of October 23, 2001, covered the products in Class 9 as identified in paragraph 1, above. Applicant admits that Opposer filed a request for an extension of time to oppose registration of Applicant's UNIFIED COLLABORATION mark, which was granted by the Trademark Trial and Appeal Board. Except as expressly set forth herein, Applicant denies the allegations in paragraph 1.

2. [sic, first occurrence] Registrations. Opposer has standing to oppose the published application based on Opposer's statutory rights in its UNIFY trademarks. Opposer is the owner of the following UNIFY registrations and applications in International Classes 9, 41, and 42, including:

a. UNIFY: U.S. Registration No. 1,663,326 in connection with computer programs and instructional manuals sold as a unit for use in business, science, and education in Class 9, which recites a date of first use in commerce of November 18, 1981 (copy annexed as Exhibit B);

b. UNIFY: U.S. Registration No. 1,843,232 in connection with educational services, namely providing courses, seminars, and workshops in the field of computers; computer software, programming and database applications in Class 41, reciting a date of first use in commerce of September 23, 1984, and computer software design for others and consulting services in the field of computers, computer software, programming and database applications, reciting a date of first use in commerce of June 18, 1987 (copy annexed as Exhibit C);

c. UNIFY VISION: U.S. Registration No. 2,289,276 in connection with computer programs or software, namely, computer programs for use in developing application programs, database management software, and applications management software; and instructional manuals sold as a unit in Class 9, reciting a date of first use in commerce of November 16, 1993; educational services, namely, providing courses, seminars, and workshops in the field of computers, computer software, programming and database applications in International class 41, reciting a date of first use in commerce of November 16, 1993; computer software design for others and consulting services in the field of computers, computer software, programming and database applications in International class 42, reciting a date of first use in commerce of November 16, 1993 (copy annexed as Exhibit D);

d. UNIFY VISION/WEB: U.S. Reg. No. 2,298,547 in connection with computer programs of software, namely, computer programs for use in developing application programs, database management software, and application management software; and instructional manuals sold as a unit in International

class 9, which recites a date of first use in commerce of January 2, 1997 (copy annexed as Exhibit E); and

e. UNIFY DATASERVER: U.S. Application Serial No. 75/720,640 in connection with computer programs for database management in the field of telecommunications, healthcare information systems, point of sale systems, and for computer applications requiring database management and user instruction manuals sold therewith in International class 9, which recites a date of first use in commerce February 19, 1997 (copy annexed as Exhibit F).

Opposer is also the owner of several other registrations and applications.

Answering paragraph 2 of the Notice of Opposition, other than the attachments to the Notice of Opposition which appear to be copies of trademark registration and application information, but are not labeled Exhibits B through F, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

2. [sic, second occurrence] Common Law Rights. Opposer also has standing to oppose the published application based on Opposer's common law rights in its UNIFY trademarks. These include the marks UNIFY, UNIFY VISION, UNIFY VISION WEB, UNIFY EWAVE, UNIFY DATASERVER, UNIFY DBINTEGRATOR, and UNIFY ACCELL, for use in connection with computer software, computer programs, and computer database applications. Opposer has used the UNIFY trademark since at least as early as 1981. In subsequent years, Opposer has continued to use the mark and build a family of marks containing the UNIFY mark. This use has been valid and continuous and has not been abandoned. Opposer's UNIFY trademarks have been popular and well known for many years and the products and services sold in connection therewith have been the subject of substantial advertising and promotional activities. Marks containing the term "UNIFY" are distinctive and have acquired secondary meaning through Opposer's use. These marks are therefore entitled to strong protection under trademark law and would be damaged by the registration of the mark "UNIFIED COLLABORATION" shown in Application Serial No. 76/098,180.

Answering paragraph 2 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations. Applicant denies that registration of the mark UNIFIED COLLABORATION would damage Opposer.

3. Opposer's use in interstate commerce of its UNIFY marks in connection with its goods and services is prior to July 27, 2000, the filing date of U.S. Appl. Ser. No. 76/098,180.

Answering paragraph 3 of the Notice of Opposition, Applicant does not have sufficient

knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations.

4. Opposer's marks and trade names are symbolic of the extensive goodwill and consumer recognition built up by Opposer in the UNIFY marks through substantial amounts of time and effort in advertising and promotion of its goods and services. Opposer has offered goods and services in association with the UNIFY marks extensively and continuously in commerce in the United States since as early as 1981. This use has been valid and continuous and has not been abandoned.

Answering paragraph 4 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

5. In view of the similarity of the respective marks and the related nature of the goods and services, it is respectfully evident that the Applicant's mark so resembles Opposer's mark in spelling, pronunciation, usage, goods/services, channels of trade and consumers, that Applicant's mark will likely cause confusion or mistake, or will deceive or falsely suggest an association with Opposer.

Answering paragraph 5 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

6. If Applicant is permitted to use and register its mark for its goods and services, as specified in the application herein opposed, the resulting likelihood of confusion, mistake, deception, or false association will cause irreparable damage to the goodwill and consumer recognition that Opposer has built up in the UNIFY marks.

Answering paragraph 6 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

7. Opposer avers that the Applicant's use of said mark interferes with the Opposer's use of its UNIFY marks and will embarrass Opposer in the free use of its marks. Registration of the mark by Applicant will seriously damage Opposer under Section 2(d) of the Trademark Act.

Answering paragraph 7 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

8. Opposer's UNIFY marks are well known and famous and by virtue of their renown and fame, and in view of the dominant role of fame in analyzing likelihood of confusion, there is an increased likelihood of confusion between the UNIFY marks and the opposed mark.

Answering paragraph 8 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

First Affirmative Defense

9. Applicant affirmatively alleges that registration of the UNIFIED COLLABORATION mark is not likely to damage Opposer. There has been concurrent use of the marks for nearly two years without any known instance of actual confusion.

Second Affirmative Defense

10. Applicant affirmatively alleges that Opposer does not own any mark comprising UNIFIED COLLABORATION.

Third Affirmative Defense

11. Applicant affirmatively alleges that there is no likelihood of confusion, mistake or deception because Opposer does not use or have rights in the mark UNIFIED COLLABORATION or any mark similar thereto.

COUNTERCLAIM

12. Applicant hereby counterclaims for cancellation of Registration Nos. 1,843,232, 2,289,276, 2,298,547, and 2,531,160, Opposer's registrations cited in the Notice of Opposition.

13. Applicant hereby re-alleges each and every allegation admitted or denied in conjunction with paragraphs 1 through 8 of the Notice of Opposition which are incorporated herein by reference.

14. The goods and services identified in each of Opposer's registrations are indefinite and overbroad and do not list with particularity the common commercial names for said goods and services, and thus, do not comply with 37 C.F.R. Sections 2.32, 2.34, 2.43, 2.61, and 2.71.

WHEREFORE, Applicant contends that this opposition is groundless and baseless in fact; that Opposer has failed to show wherein it will be, or is likely to be, damaged by registration of Applicant's mark; and Applicant prays as follows:

(a) this opposition be dismissed;

(b) Applicant be granted registration of its mark;

(c) Registration No. 1,843,232 be cancelled;

(d) Registration No. 2,289,276 be cancelled;

(e) Registration No. 2,298,547 be cancelled; and

(f) Registration No. 2,531,160 be cancelled.

SINPAG INTERNATIONAL, INC.

Dated: June 14, 2002

By:

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of each of the foregoing APPLICANT'S RESPONSE TO THE BOARD'S NOTICE OF DEFAULT AND ORDER TO SHOW CAUSE; APPLICANT'S MOTION THAT ITS LATE-FILED ANSWER BE ACCEPTED; APPLICANT'S ANSWER TO NOTICE OF OPPOSITION was served on June 14, 2002, by first class mail, postage prepaid, addressed to the following:

Mitchell P. Brook, Esq.
BAKER & McKENZIE
101 West Broadway, 12th Floor
San Diego, CA 92101

One of the Attorneys for Applicant