

I hereby certify that on the date specified below, this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to Trademark Trial and Appeal Board, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514.

May 3, 2004
Date

Annette Baca
Annette Baca

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

MICROSOFT CORPORATION,)
)
)
)
Opposer,)
)
v.)
)
VALVERDE INVESTMENTS, INC.,)
)
Applicant.)
_____)

OPPOSITION NO. 91/154,797

Serial No. 76/156,933



05-07-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

Docket No. 669005.828

Trademark Trial and Appeal Board
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

REPLY IN SUPPORT OF OPPOSER MICROSOFT CORPORATION'S MOTION FOR SUMMARY JUDGMENT

Opposer Microsoft Corporation ("Microsoft") hereby submits its reply memorandum in support of its motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure voiding the application by Valverde Investments, Inc. ("Applicant") to register the mark BACKPAGE and refusing registration to that mark.¹

¹ Opposer's motion to amend its notice of opposition, filed concurrently with this motion, was not opposed by Applicant.

Applicant opposes the motion for summary judgment by asserting there is a material factual dispute when, in fact, there is not. There are no genuine issues of material fact and the issue is ripe for summary judgment.

The parties agree that the controlling legal issue is whether Applicant's assignment of the present application to Conectron, Inc. ("Conectron"), (the "Conectron Assignment"), transfers to Conectron the portion of Valverde's business to which the mark relates, as required by Section 10 of the Trademark Act, 15 U.S.C. § 1060 for intent-to-use applications.

This reply brief is supported by the pleadings on file in this case, the Declaration of Katherine J. Drakos ("Drakos Decl.") filed on March 12, 2004 and the concurrently filed Declaration of William O. Ferron, Jr. ("Ferron Decl."), together with the exhibits attached thereto.

I. THE MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED

A. There Are No Material Facts In Dispute

Summary judgments are encouraged in inter partes trademark proceedings before the Board, *Phoenix Closures, Inc. v. Yen Shaing Corp.*, 9 U.S.P.Q.2d 1891, 1892 (TTAB 1988), because the issues are limited to registrability and are therefore "particularly suitable" for disposition by summary judgment. *Pure Gold, Inc. v. Syntex (U.S.A.) Inc.*, 739 F.2d 624, 627 n.2, 222 U.S.P.Q. 741, 744 n.2 (Fed. Cir. 1984).

Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Giant Food, Inc. v. Standard Terry Mills, Inc.*, 229 U.S.P.Q. 955, 961 (TTAB 1986). No genuine issue for trial exists where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party. *Matsushita Electric Industrial Co. Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1987). A dispute is genuine only if, on the entirety of the record, a reasonable trier of fact could resolve a material factual matter in favor of the non-moving party. *Sweats Fashions, Inc. v. Pannill*

Knitting Co., 833 F.2d 1560, 4 U.S.P.Q.2d 1793 (Fed. Cir. 1987), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). Disputes over facts which will not affect the outcome under the governing law are immaterial and do not preclude the entry of summary judgment. Finally, Rule 56(c) mandates the entry of summary judgment “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Scosche Industries, Inc. v. Visor Gear, Inc.*, 121 F.3d 675, 681 (Fed. Cir. 1997) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

Applicant contends there is one genuine issue of material fact, namely:

1. The Conectron Assignment does sell or otherwise transfer the portion of Valverde’s business associated with the BACKPAGE mark to Conectron.

Applicant’s Response To Opposer’s Motion For Summary Judgment, page 3.

Applicant incorrectly applies case law to argue that the Conectron Assignment is open to interpretation, and fails to provide a showing sufficient to establish the existence of an element essential to Applicant’s case.

B. The Plain Meaning of the Conectron Assignment Does Not Comply With the Requirements of 15 U.S.C. § 1060

The operative language of the Conectron Assignment states:

...Valverde Investments, Inc. hereby sells, assigns and transfers to Conectron, Inc. all right, title, interest and good will in and to the Mark and the pending Application therefore, together with the goodwill of that portion of Valverde Investments, Inc.’s business in connection with which it has a *bona fide* intent to use the Mark.

See Conectron Assignment, Exhibits B and C to Drakos Decl.

The above language is clear and unambiguous. By operation of the Conectron Assignment, Valverde sold, assigned and transferred the goodwill of that portion of Valverde’s business to which Valverde had a *bona fide* intent to use the BACKPAGE mark. Contrary to

Applicant's argument, this conveyance of goodwill is not a conveyance of Applicant's business or the portion of its business to which the BACKPAGE mark pertains.

15 U.S.C. Section 1060 only permits the assignment of an intent-to-use application if the conveyance also transfers a portion of the business to which the mark pertains. It provides, in relevant part:

...[N]o application to register a mark under section 1(b) shall be assignable prior to the filing of an amendment under section 1(c) to bring the application into conformity with section 1(a) or the filing of the verified statement of use under section 1(d), except for an assignment to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing...

Id.

The Conectron Assignment is clear on its face and contains no language conveying Applicant's business or any portion of Applicant's business. There is no ambiguity here. Applicant cannot, now in hindsight, attempt to remedy this fatal omission by claiming that the absence of such a clause gives rise to a genuine issue of material fact.

C. The Operative Language in the Conectron Assignment Is Identical to That Found to Be Fatally Flawed in *Clorox*

Applicant would like this Board to dismiss the applicability of *Clorox Co. v. Chemical Bank*, 40 U.S.P.Q.2d 1098, 1104-06 (T.T.A.B. 1996), a seminal case on the assignment of intent-to-use applications, by saying it is not applicable to the current facts because, in *Clorox*, the intent of the trademark assignment was to establish a security interest. That is not true. The Board in *Clorox* said:

For the purposes of this motion, Registrant will stipulate that the intent of the parties as regards execution of the assignment document was, in fact, to execute an assignment.

Id. at 1102 (*emphasis original*).

Thus, *Clorox* fits squarely within the facts of the present case and provides precise guidance in determining whether Microsoft's motion for summary judgment should be granted.

In *Clorox*, the Board examined assignment language essentially identical to that here, found it clear on its face, and refused to look at extrinsic or parol evidence. *Id.* Finding that the assignment in *Clorox* made no transfer of the ongoing existing business to which the mark pertained, the Board determined that the intent-to-use application was invalid for failing to comply with Section 1060 of the Trademark Act, and ruled that, as a matter of law, invalid assignments of intent-to-use applications render the application or resulting registration void. *Id.* at 1105-1106.

The relevant language in the assignment from USA to Chemical stated:

The Assignor...hereby assigns and transfers to the Assignee all of the Assignor's right, title and interest in and to all of the Assignor's Tradenames [sic] and/or Trademarks..., together with the *goodwill of the business connected with the use of and symbolized by these respective Trademarks...*

Id. at 1102-1103 (*emphasis added*).

Thus, as with the Conectron Assignment, the assignment in *Clorox* transferred the goodwill of the business, but did not transfer the portion the business to which the mark pertained. The Board explicitly stated "it is plain that [Chemical] was not a successor to the business of USA Detergents Inc. since no transfer was made to [Chemical] of the ongoing and existing business to which the mark pertained." *Id.* at 1104.

In the present case, the parties do not dispute that the intent of the Conectron Assignment was to, in fact, execute an assignment. Thus, just as with *Clorox*, there are no genuine issues of material fact. We next look to the plain meaning of the Conectron Assignment. Again, its relevant part states:

...Valverde Investments, Inc. hereby sells, assigns and transfers to Conectron, Inc. all right, title, interest and good will in and to the Mark and the pending Application therefore, together with *the goodwill of that portion of Valverde Investments, Inc. 's business in connection with which it has a bona fide intent to use the Mark.*

See Conectron Assignment (emphasis added), Exhibits B and C to Drakos Decl.

Comparing the assignment in *Clorox* to the Conectron Assignment shows that the relevant portions of each contain the same fatal error. Both assignments transfer the goodwill of the business associated with the mark, but do not transfer a portion of the business associated with the mark. As a result, just as in *Clorox*, the Conectron Assignment does not comply with 15 U.S.C. § 1060 and, as a matter of law, is invalid and renders the BACKPAGE application void.

Accordingly, Microsoft's motion for summary judgment should be granted.

D. In a Previous Assignment of This Application, Applicant Obtained an Assignment in Compliance With Section 1060, Showing That Applicant Knows How to Draft Correct Language

Prior to the Conectron Assignment, the present application for BACKPAGE was assigned to Applicant from its predecessor. This assignment (the "Valverde Assignment") is recorded with the United States Patent and Trademark Office at Reel/Frame 2415/0744. Ferron Decl., ¶ 2, 3.

The operative language of the Valverde Assignment states:

...Fernando Valverde and Rodolfo Ibarra hereby sell, assign and transfer to Valverde Investments, Inc. all right, title and interest in and to the Marks and the pending Applications therefor, together *with that portion of Fernando Valverde and Rodolfo Ibarra's business* in connection with which it has a *bona fide* intent to use the Marks.

See Valverde Assignment (*emphasis added*), Exhibits A and B to Ferron Decl.

II. APPLICANT'S OPPOSITION AND SUPPORTING DECLARATIONS FAIL TO SHOW THE EXISTANCE OF GENUINE ISSUE OF MATERIAL FACT, RELY ON INAPPLICABLE CASE LAW, AND FAIL TO MEET ITS BURDEN OF COMING FORWARD

In arguing that summary judgment is inappropriate, Applicant's sole contention is that the Conectron Assignment in fact transfers the portion of Valverde's business associated with the BACKPAGE mark to Conectron. See Applicant's Response to Opposer's Motion For Summary Judgment, page 3.

First, Applicant misapplies case law to argue that the Conectron Assignment, as written, is open to interpretation and can be read to mean that a portion of Valverde's business associated with the BACKPAGE mark was transferred to Conectron. Applicant then offers flawed arguments and self-serving statements in an attempt to persuade a reading in its favor. Thus, Applicant starts with a false legal premise and further fails by not meeting its burden of showing the existence of a genuine issue of material fact.

A. Applicant Misapplies Case Law

Applicant cites three cases from the 1930s to argue "there are a number of cases that hold that no particular forms of words are necessary to affect the transfer of the trademark." See Applicant's Response to Opposer's Motion For Summary Judgment, page 4.²

However, none of these cases deal with the assignment of intent-to-use applications. None discuss the requirements of 15 U.S.C. § 1060, and none discuss language requirements for effecting an assignment that transfers a portion of the business to which the mark pertains.

Instead, the cases cited by Applicant discuss another well-known principal in trademark law that when an entire business is sold, associated trademark rights may pass with the business—even in the absence of a formal trademark assignment. See, e.g., *May v. Goodyear Tire & Rubber Co.*, 10 F.Supp. 249, 257 (D.C. Mass 1935). This principal has nothing to do with the facts at hand. Applicant did not outright sell Valverde Investments, Inc. to Conectron, and is making no such assertion.

In the present facts, Applicant has assigned an intent-to-use application to Conectron. To survive summary judgment it has the burden of making a sufficient showing that in its trademark assignment it also sold its business or at least the portion of its business to which the BACKPAGE mark pertains. This is not the same thing as selling a business and arguing that, along with the sale, the trademark associated with the business was also sold!

² Applicant cites *Holly Hill Citrus Growers' Ass'n v. Holly Hill Fruit Products, Inc.* 75 F.2d 13 (5th Cir. 1935); *May v. Goodyear Tire & Rubber Co.*, 10 F.Supp. 249 (D.C. Mass 1935); and *Woodward v. White Satin Mills Corp.*, 42 F.2d 987 (8th Cir. 1930).

B. Applicant Fails to Meet Burden of Coming Forward

Even if Applicant's argument that the Conectron Assignment is open to interpretation merits any consideration (which it does not), Applicant further fails in meeting its burden of showing the existence of a genuine issue of material fact.

Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Scosche Industries, Inc. v. Visor Gear, Inc.*, 121 F.3d 675, 681 (Fed. Cir. 1997) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

1. Applicant's Attempt to Explain What Portion of Applicant's Business Associated With the BACKPAGE Mark Was Transferred to Conectron Also Fails

Applicant states that Conectron was created "for the sole purpose of developing goods associated with the BACKPAGE mark and marketing those goods under the BACKPAGE mark; and therefore, the portion of the business to which the mark is associated was transferred in the Assignment Agreement." *See Applicant's Response to Opposer's Motion For Summary Judgment*, page 5.

This explanation not only fails to support Applicant's contention that the Conectron Assignment transferred a portion of Applicant's business but, significantly, this very explanation demonstrates that Applicant did **not** transfer to Conectron the portion of its business to which the BACKPAGE mark relates.

Conectron was formed in 2000, before the present application was filed. Applicant's discovery responses in this opposition indicate that Conectron began using the present mark in July 2001, and has been Applicant's licensee since the BACKPAGE mark was assigned to Applicant in November 2001. Ferron Decl., ¶ 4-7. Thus, Applicant's arguments in its Opposition to this Motion about the reasons why Conectron was formed tell us nothing of what was transferred in the later Conectron Assignment except that Applicant could **not** have assigned

to Conectron via the recent Conectron Assignment something that Conectron already owned— i.e., Conectron’s business as a BACKPAGE licensee.

2. *Applicant’s Conclusory, Self-Serving Statements Do Not Meet the Burden of Coming Forward With Evidence to Show That Conectron Assignment Is Open to Interpretation*

In claiming that the Conectron Assignment, as written, is open to interpretation and can be read to mean that a portion of Valverde’s business associated with the BACKPAGE mark was transferred to Conectron, Applicant provides two declarations. In these declarations, the officers of Valverde and Conectron offer their conclusory opinion that the omitted transfer is in fact contained in the Conectron Agreement. Each declarant simply states, in relevant part, “I further state that the portion of the Valverde Investment, Inc. business to which the BACKPAGE mark pertains was transferred in the Assignment Agreement [Conectron Agreement].” See the declaration of Fernando Valverde (“Valverde Decl.”), ¶ 4, and the declaration of Rudy Ibarra, (“Ibarra Decl.”), ¶ 4.

The problem with these declarations is three-fold. One, they are self-serving statements that carry no weight. Two, they are statements that run counter to what is actually stated in the Conectron Agreement. And, three, they fail to show the existence of any evidence to substantiate the contention that a portion of Applicant’s business to which the BACKPAGE mark relates was transferred to Conectron. Thus, even if Applicant were entitled to rely on the parol evidence rule to bring in evidence of what the parties to the Conectron Agreement meant (which it is not), Applicant fails to bring forth any evidence sufficient enough to rebut the presumption that the general rule of contract interpretation, which is that the best evidence of what the terms of an agreement are, and what those terms mean, is the language of the agreement itself.

III. CONCLUSION

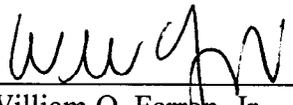
Microsoft’s Motion for Summary Judgment should be granted. Applicant assigned the rights of the present intent-to-use application in violation of Section 1060 and such action, as a

matter of law, renders the application void. Applicant's arguments do not give rise to any evidence establishing a material question of fact. Accordingly, judgment should be entered in Microsoft's favor sustaining the opposition and refusing Applicant's application.

DATED this 3rd day of May, 2004.

Respectfully submitted,

SEED Intellectual Property Law Group PLLC



William O. Ferron, Jr.
Katherine J. Drakos
701 Fifth Avenue, Suite 6300
Seattle, Washington 98104
Phone: (206) 622-4900
Fax: (206) 682-6031

Attorney for Opposer
MICROSOFT CORPORATION

CERTIFICATE OF SERVICE

I, Annette Baca, hereby certify that the above **REPLY IN SUPPORT OF OPPOSER MICROSOFT CORPORATION'S FOR SUMMARY JUDGMENT** was served on Applicant by depositing same with the U.S. Postal Service, first-class postage prepaid on May 3, 2004, addressed as follows:

Barry L. Haley, Esq.
MALIN, HALEY & DIMAGGIO, P.A.
1936 S. Andrews Ave.
Fort Lauderdale, Florida 33316



Annette Baca

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I hereby certify that on the date specified below, this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to Trademark Trial and Appeal Board, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514.

May 3, 2004
Date

Annette Baca
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05-07-2004
U.S. Patent & TMO/TM Mail Rcpt Dt. #22

**DECLARATION OF WILLIAM O. FERRON, JR. IN
SUPPORT OF OPPOSER MICROSOFT CORPORATION'S
MOTION FOR SUMMARY JUDGMENT**

William O. Ferron, Jr. makes the following declaration on personal knowledge:

1. I am a principal of the SEED Intellectual Property Law Group PLLC and lead counsel for Opposer Microsoft Corporation ("Opposer") in this proceeding. The following facts are true of my own knowledge unless otherwise stated.

2. Attached hereto as Exhibit A is a true and correct copy of an assignment showing that, prior to the Conectron Assignment, the present BACKPAGE mark was assigned to Applicant (the "Valverde Assignment").

3. Attached hereto as Exhibit B is a true and correct copy of the Valverde Assignment as recorded in the United States Patent and Trademark Office on December 26, 2001 at reel/frame 2415/0744.

4. Attached hereto as Exhibit C is a true and correct copy of Applicant's Supplemental Response to Interrogatory No. 21, in which Applicant states that Conectron was formed on January 24, 2000.

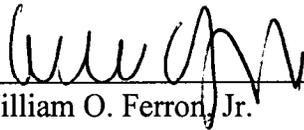
5. Attached hereto as Exhibit D is a true and correct copy of Applicant's Response to Interrogatory No. 2. In response to Interrogatory No. 2(a), Applicant states that the BACKPAGE mark was first introduced on July 5, 2001. In response to Interrogatory No. 2(b), Applicant describes all manners in which Applicant or its licensees have used the mark BACKPAGE, and states: "The mark BACKPAGE has been used in association with the BACKPAGE product on Conectron, Inc.'s website, trade shows, brochures, and e-mail advertisements."

6. Attached hereto as Exhibit E is a true and correct copy of Applicant's Response to Interrogatory No. 4, in which Applicant identifies the customers or classes of customers to which Applicant or its licensees market and sell BACKPAGE products and services. It states: "Customers of Conectron, Inc. that have used the BACKPAGE product include ..."

7. In November 2001, the BACKPAGE mark was assigned to Applicant. Exhibits A and B provide a true and correct copy of the Valverde Assignment.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

DATED this 3rd day of May, 2004.



William O. Ferron, Jr.

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CERTIFICATE OF SERVICE

I, Annette Baca, hereby certify that the above **DECLARATION OF WILLIAM O. FERRON, JR. IN SUPPORT OF OPPOSER MICROSOFT CORPORATION'S MOTION FOR SUMMARY JUDGMENT** was served on Applicant's counsel by depositing same with the U.S. Postal Service, first-class postage prepaid, on May 3, 2004, addressed as follows:

Barry L. Haley, Esq.
MALIN, HALEY & DIMAGGIO, P.A.
1936 S. Andrews Ave.
Fort Lauderdale, Florida 33316



Annette Baca

476822_2.DOC

TRADEMARK ASSIGNMENT PURSUANT TO 15 U.S.C. § 1060, section 10
TRADEMARK MANUAL OF EXAMINING PROCEDURE 501.01 (a)

A

WHEREAS, Fernando Valverde and Rodolfo Ibarra, individuals having an address of 12028 S.W. 75th Street, Miami, Florida 3383 and 279 Galeon Court, Coral Gables, Florida 33143, respectively, own and have a *bona fide* intent to use the below listed marks (collectively, the "Marks"):

BACK OF A WEB PAGE	76/156,612
BACKPAGE	76/156,933
BACKSPACE	76/157,353
BIPAGE	76/156,611
GLUECODE	76/157,354
GLUEPAGE	76/156,724

in connection with the following goods: Computer software used to assist in the design and deployment of software applications on the Internet; and

WHEREAS, Fernando Valverde and Rodolfo Ibarra have applied to register these above referenced Marks on the Principal Register of the United States Patent and Trademark Office based on their *bona fide* intent to use the Marks in commerce in connection with the above described goods and;

WHEREAS, Valverde Investments, Inc. a Florida Corporation, with its principal place of business at 279 Galeon Court, Coral Gables, Florida 33143, desires to acquire the business of Fernando Valverde and Rodolfo Ibarra in connection with which Fernando Valverde and Rodolfo Ibarra have a *bona fide* intent to use the Marks and the pending Applications;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Fernando Valverde and Rodolfo Ibarra hereby sell, assign and transfer to Valverde Investments, Inc. all right, title and interest in

EXHIBIT A

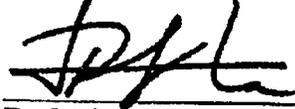
TRADEMARK
REEL: 2415 FRAME: 0745

and to the Marks and the pending Applications therefor, together with that portion of Fernando Valverde and Rodolfo Ibarra's business in connection with which it has a *bona fide* intent to use the Marks.



Fernando Valverde

11/1/01
Date

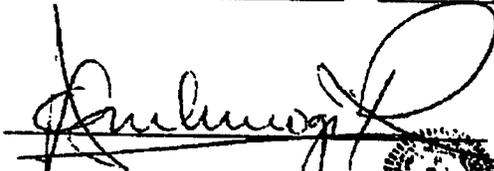


Rodolfo Ibarra

11-02-01
Date

SUBSCRIBED and SWORN to

before me this 2nd day of NOVEMBER 2001



Notary Public



OCTAVIO A. AMBROGIO
Commission # OC 817563
Expires May 3, 2003
Bonded To
Atlantic Bonding Co., Inc.



Octavio A. Ambrogio
Commission # OC 817563
Expires May 3, 2003
Bonded To
Atlantic Bonding Co., Inc.

My Commission Expires: 5/03

I:10000/10195/memo/37051TUAssignment

RECORDED: 12/26/2001

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FORM I

12-26-2001

U.S. Patent & TMO/OTM Mail Report Form 779

ECORI

01-03-2002



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F

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):
Fernando Valverde and Rodolfo Ibarra
[X] Individual(s) [] Association
[] General Partnership [] Limited Partnership
[] Corporation-State
Additional name(s) of conveying party(ies) attached [] Yes [X] No

12-7601

2. Name and address of receiving party(ies)
Name: Valverde Investments, Inc.
Internal Address:
Street Address: 279 Galeon Court
City: Coral Gables State: FL ZIP: 33143
[] Individual(s) citizenship:
[] Association:
[X] Corporation-State: Florida
If assignee is not domiciled in the United States, a domestic representative designation is attached: [] Yes [] No
(Designations must be a separate document from assignment)
Additional name(s) and address(es) attached? [] Yes [X] No

3. Nature of conveyance:
[X] Assignment [] Merger
[] Security Agreement [] Change of Name
Execution Date:
Fernando Valverde: 11/01/2001 Rodolfo Ibarra: 11/02/2001

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
BACK OF A WEB PAGE 76/156,612
BACKPAGE 76/156,933
BACKSPACE 76/157,353
BIPAGE 76/156,611
GLUECODE 76/157,354
GLUEPAGE 76/156,724

B. Trademark No.(s)

Additional numbers attached? [] Yes [x] No

5. Name and address of party to whom correspondence concerning document should be mailed
Name: Barry L. Haley, Esq.
Internal Address: Malin, Haley & DiMaggio, P.A.
Street Address: 1936 South Andrews Avenue
City: Fort Lauderdale State: Florida ZIP: 33316
Telephone: (954) 763-3303

6. Total number of applications and registrations involved: six
7. Total fee (37 CFR 3.41) \$165.00
[X] Enclosed
[] Authorized to be charged to Deposit Account
8. Deposit account number: 13-1130

01/03/2002 DDYRNE 00000001 76156612

DO NOT USE THIS SPACE

01 FC:481 40.00 DR
02 FC:482 125.00 DR

9. Statement and signature.
To the best of my knowledge and belief the foregoing information is true and correct and any attached copy is a true copy of the original document.

Barry L. Haley
Barry L. Haley, Reg. No. 25,330

12/19/2001
Date

Total number of pages including cover sheet, attachments, and document: 5

Mail documents to be recorded with required cover sheet information to:
Commission of Patents and Trademarks, Box Assignments

120

TRADEMARK ASSIGNMENT PURSUANT TO 15 U.S.C. § 1060, section 10
TRADEMARK MANUAL OF EXAMINING PROCEDURE 501.01 (a)

WHEREAS, Fernando Valverde and Rodolfo Ibarra, individuals having an address of 12028 S.W. 75th Street, Miami, Florida 3383 and 279 Galeon Court, Coral Gables, Florida 33143, respectively, own and have a *bona fide* intent to use the below listed marks (collectively, the "Marks"):

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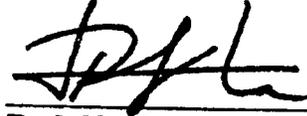
NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Fernando Valverde and Rodolfo Ibarra hereby sell, assign and transfer to Valverde Investments, Inc. all right, title and interest in

and to the Marks and the pending Applications therefor, together with that portion of Fernando Valverde and Rodolfo Ibarra's business in connection with which it has a *bona fide* intent to use the Marks.



Fernando Valverde

11/1/01
Date

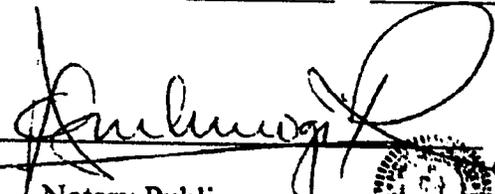


Rodolfo Ibarra

11-02-01
Date

SUBSCRIBED and SWORN to

before me this 2nd day of NOVEMBER 2001



Notary Public



Octavio C. Ambrogio
Commission # 00 817963
Expires May 3, 2003
Bonded Through
Atlantic Bonding Co., Inc.



Octavio C. Ambrogio
Commission # 00 817963
Expires May 3, 2003
Bonded Through
Atlantic Bonding Co., Inc.

My Commission Expires: 5/03

I:10000/10195/memo/37031TU Assignment

RECORDED: 12/26/2001

TRADEMARK
REEL: 2415 FRAME: 0746

Wof ABKJD
OIG RM +1
66905.829

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

January 29, 2004

In the matter of Application
Serial No. 76/156,933

Published in the Official Gazette
on September 17, 2002

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FEB 18

SEED INTELLECTUAL PROPERTY
LAW GROUP LITIGATION

MICROSOFT CORPORATION,
Opposer,
v.
VALVERDE INVESTMENTS, INC.,
Applicant.

Opposition No. 91154797

APPLICANT'S SUPPLEMENTAL RESPONSE TO OPPOSER'S
INTERROGATORY NO. 21.

Applicant, Valverde Investments, Inc., by and through undersigned counsel, gives notice of its filing Applicant's Supplemental Response to Opposer's Interrogatory No. 21.

INTERROGATORY NO. 21

Describe in detail the nature of the relationship between Valverde Investments, Inc. and Conextron, Inc., including with respect to Conextron's activities relating to BACKPAGE products and services.

COPY TO CLIENT
Date Sent 2/13/04

EXHIBIT C

Response:

Valverde Investments, Inc. was formed on November 4, 1999 as a Florida Corporation with the sole purpose of developing the BACKPAGE software product and marketing the BACKPAGE product once developed. The assets including the intellectual property and good will were subsequently transferred to a new Corporation, Conectron, Inc. that was formed on January 24, 2000.

February 10, 2004
Date: ~~January~~ February, 2004

Barry L. Haley
Barry L. Haley, Reg. No. 25,339
MALIN, HALEY & DIMAGGIO, P.A.
1936 South Andrews Ave.
Ft. Lauderdale, FL 33316
Tel: (954) 763-3303
Fax: (954) 522-6507

As to Answers:
Valverde Investments, Inc.

I DECLARE UNDER PENALTIES OF PERJURY that the foregoing answers are true and correct.

Date: January 31, 2004.

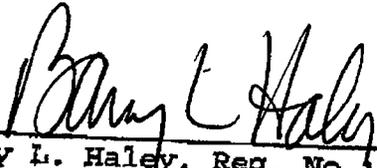
Fernando Valverde
DR. FERNANDO VALVERDE, Officer
Valverde Investments, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing APPLICANT'S SUPPLEMENTAL RESPONSE TO OPPOSER'S INTERROGATORY NO. 21, in Opposition No. 91154797 is being deposited as First Class mail with the United States Postal Service in a postage-paid envelope addressed to: Assistant Commissioner for Trademarks, Attn: Box TTAB, 2900 Crystal Drive, Arlington, Virginia 22202; and a true and correct copy of same deposited with the United States Postal Service in a postage-paid envelope addressed to attorneys for Opposer:

William O. Ferron, Jr., Esq.
SEED Intellectual Property Law Group PLLC
701 Fifth Avenue, Suite 6300
Seattle, WA 98104-7092
Tel: (206) 622-4900
Fax: (206) 682-6031

this 10th day of ~~January~~ *February*, 2004.


Barry L. Haley, Reg. No. 25,339
MALIN, HALEY & DIMAGGIO, P.A.
1936 South Andrews Ave.
Ft. Lauderdale, FL 33316
Tel: (954) 763-3303
Fax: (954) 522-6507

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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OCT 17 2003

In the matter of Application
Serial No. 76/156,933

SEED INTELLECTUAL PROPERTY
LAW GROUP-LITIGATION

Published in the Official Gazette
on September 17, 2002

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Orig: Jw + i

D

MICROSOFT CORPORATION,)	Opposition No. 91154797
)	
Opposer,)	
)	
v.)	
)	
VALVERDE INVESTMENTS, INC.,)	
)	
Applicant.)	
_____)	

APPLICANT'S ANSWERS TO OPPOSER'S FIRST SET OF INTERROGATORIES

COMES NOW Applicant, Valverde Investments, Inc. ("Applicant"), pursuant to Rule 33, Fed.R.Civ.P., and 37 C.F.R. § 2.120, and hereby responds to Opposer, Microsoft Corporation's ("Opposer") Interrogatories numbered 1 through 26 by submitting the following answers and objections.

Applicant's responses are made without waiving or intending to waive any objections as to relevancy, privilege, or admissibility of any information provided in response to Opposer's Interrogatories in any subsequent proceeding or at the trial of this or any other action, on any ground. A partial answer to any

COPY TO CLIENT

Date Sent 10/17/03

EXHIBIT D

INTERROGATORIES

INTERROGATORY NO. 1

Identify all products and services ever marketed or sold by, for or under authorization from Applicant under or in association with the mark BACKPAGE.

RESPONSE:

BACKPAGE software application.

INTERROGATORY NO. 2

As to each product and service identified in response to Interrogatory No. 1,

(a) State the date when use of the BACKPAGE mark began and, where applicable, ceased in association with such product or service.

(b) Describe all manners in which Applicant or its licensees has used the mark BACKPAGE in association with such product or service.

(c) Describe the manner in which the mark BACKPAGE is currently being used in association with such product or services.

(d) Identify the persons most knowledgeable concerning Applicant's and, if applicable, its licensees' use of the BACKPAGE mark in association with each of the products and/or services identified in response to Interrogatory No. 1.

RESPONSE:

(a) Introduced July 5, 2001.

(b) The mark BACKPAGE has been used in association with the BACKPAGE product on Conectron, Inc.'s website, trade shows, brochures, and e-mail advertisements.

(c) The term BACKPAGE is currently being used on Conectron, Inc.'s website.

(d) Rudy Ibarra and Dr. Fernando Valverde.

INTERROGATORY NO. 3

If Opposer has ever discontinued the use of the BACKPAGE mark,

(a) State the inclusive dates of each period of non-use;

(b) State the reason(s) for discontinuance of use.

RESPONSE:

(a) None.

(b) None.

INTERROGATORY NO. 4

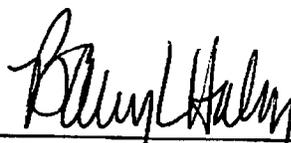
Identify the customers or classes of customers to which Applicant and its licensees market and sell BACKPAGE products and services and the channels of trade in which such products and services are sold, including at least one representative actual or potential customer in each different customer class and channel of trade (e.g., one wholesale distributor, one retail customer and one from each other class).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing **APPLICANT'S ANSWERS TO OPPOSER'S FIRST SET OF INTERROGATORIES** in Opposition No. 91154797 is being deposited as First Class mail with the United States Postal Service in a postage-paid envelope addressed to attorney for Opposer:

William O. Ferron, Jr., Esq.
SEED Intellectual Property Law Group PLLC
701 Fifth Avenue, Suite 6300
Seattle, WA 98104-7092
Tel: (206) 622-4900
Fax: (206) 682-6031

this 15th day of October, 2003.



Barry L. Haley, Reg. No. 25,339
MALIN, HALEY & DiMAGGIO, P.A.
1936 South Andrews Ave.
Ft. Lauderdale, FL 33316
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I:\10195\LIT\DIS\3917.002 Answers 1st interrogs

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

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OCT 17 2003

In the matter of Application
Serial No. 76/156,933

SEED INTELLECTUAL PROPERTY
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Published in the Official Gazette
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Dist: WIF, AB, RM
Orig: Jw + i

MICROSOFT CORPORATION,)
)
Opposer,)
)
v.)
)
VALVERDE INVESTMENTS, INC.,)
)
Applicant.)
_____)

Opposition No. 91154797

E

APPLICANT'S ANSWERS TO OPPOSER'S FIRST SET OF INTERROGATORIES

COMES NOW Applicant, Valverde Investments, Inc. ("Applicant"), pursuant to Rule 33, Fed.R.Civ.P., and 37 C.F.R. § 2.120, and hereby responds to Opposer, Microsoft Corporation's ("Opposer") Interrogatories numbered 1 through 26 by submitting the following answers and objections.

Applicant's responses are made without waiving or intending to waive any objections as to relevancy, privilege, or admissibility of any information provided in response to Opposer's Interrogatories in any subsequent proceeding or at the trial of this or any other action, on any ground. A partial answer to any

COPY TO CLIENT

Date Sent 10/17/03

EXHIBIT E

(b) The mark BACKPAGE has been used in association with the BACKPAGE product on Conectron, Inc.'s website, trade shows, brochures, and e-mail advertisements.

(c) The term BACKPAGE is currently being used on Conectron, Inc.'s website.

(d) Rudy Ibarra and Dr. Fernando Valverde.

INTERROGATORY NO. 3

If Opposer has ever discontinued the use of the BACKPAGE mark,

(a) State the inclusive dates of each period of non-use;

(b) State the reason(s) for discontinuance of use.

RESPONSE:

(a) None.

(b) None.

INTERROGATORY NO. 4

Identify the customers or classes of customers to which Applicant and its licensees market and sell BACKPAGE products and services and the channels of trade in which such products and services are sold, including at least one representative actual or potential customer in each different customer class and channel of trade (e.g., one wholesale distributor, one retail customer and one from each other class).

RESPONSE:

Customers of Conectron, Inc. that have used the BACKPAGE product include Terremark Worldwide, Inc. and Florida International University.

INTERROGATORY NO. 5

Describe the features and functions of Applicant's BACKPAGE products.

RESPONSE:

Please see U.S. Patent No. 6,539,406.

INTERROGATORY NO. 6

If Applicant has ever marketed or sold its BACKPAGE products for use by web site developers,

(a) State the dates during when such marketing efforts or sales took place; and

(b) Identify all advertisements, marketing materials and product literature directed toward web site developers or describing the product's fitness for use by web site developers.

RESPONSE:

(a) None.

(b) None.

INTERROGATORY NO. 7

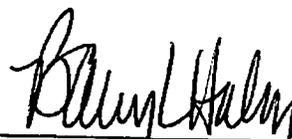
State the dollar value of gross sales, on a yearly basis, of BACKPAGE products and services.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing **APPLICANT'S ANSWERS TO OPPOSER'S FIRST SET OF INTERROGATORIES** in Opposition No. 91154797 is being deposited as First Class mail with the United States Postal Service in a postage-paid envelope addressed to attorney for Opposer:

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