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

Proceeding	91173189
Party	Defendant Logniko, Igor Logniko, Igor Apt. 2a, Brooklyn 7115 3rd Ave. , NY 11209
Correspondence Address	Richard S. Ross, Esq. 4801 South University DriveSuite 237 Ft. Lauderdale, FL 33328 UNITED STATES prodp@ix.netcom.com
Submission	Opposition/Response to Motion
Filer's Name	RICHARD S. ROSS, ESQ.
Filer's e-mail	prodp@ix.netcom.com
Signature	/richard ross/
Date	03/08/2007
Attachments	Reply-Opposition.pdf (11 pages)(287443 bytes)

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

In the matter of application Serial No. 78/612,360 TEMPLATEMONSTER

MONSTERCOMMERCE, LLC

Opposer,

v Opposition No. 91173189

IGOR LOGNIKOV

Applicant.

_____/

APPLICANT'S REPLY TO OPPOSER'S RESPONSE TO APPLICANT'S MOTION FOR ORDER COMPELLING DISCOVERY, AND RESPONSE TO CROSS-MOTION FOR ENTRY OF OPPOSER'S PROTECTIVE ORDER

COMES NOW, the Applicant, IGOR LOGNIKOV ("Applicant"), by and through his undersigned counsel, who respectfully replies to Opposer's, MONSTERCOMMERCE, LLC ("Opposer"), opposition to Applicant's motion for order compelling discovery. Applicant also responds to Opposer's cross motion for entry of a protective order. As grounds therefore, the Applicant states:

1. Applicant relies on the content of his motion, but disputes the representation that Opposer's counsel was "threatened" with a motion to compel. In fact, the purpose of the multiple communications initiated by counsel for Applicant was to avoid a motion to compel. It only became necessary after the telephone communication between counsel when Opposer's counsel refused to comply with the discovery as outlined in the motion, and the detailed e mail provided to Opposer's counsel in advance of the conference held by the parties, *see* Response, Ex. C, which was produced in advance of filing the motion.

2. Opposer's contention that "general objections" are authorized by Fed.R.Civ.P 33 and 34 are simply in error. Nowhere in those rules, or any others, are "general objections" or "to the extent objections" permissible. The insistence of Opposer on maintaining these objections, though they are not authorized, should indicate to the Board that party's intransigence in conducting discovery in good faith.

3. Opposer did serve a privilege log, attached as Exhibit 1, but it still violates Rule 26. Opposer cites seven e mails in the log, mostly from counsel to counsel, yet asserts attorney client privilege. There can be no privilege if communications are not directed to or from the client. Further, it is suspect that these few e mails form the basis for every invocation of the privilege or work product doctrine objection made by Opposer. Given the limited number of documents involved, Applicant requests that the Board order the Opposer to produce the e mails identified in the privilege log for an *in camera* inspection to determine once and for all whether any privilege exists.

4. Opposer also served a supplemental answer to Interrogatory No. 10, (Exhibit 2) as it agreed, but it still is sorely deficient. First, the Opposer has continued to interpose objections to the Interrogatory. Second, one of the objections, an allegation that the interrogatory seeks confidential information, is belied by the question and the supplemental answer in which the Applicant is seeking instances of actual confusion, and Opposer responds that it there has been "consumer" confusion, but does not indicate that any of the "consumers" are actual "customers" to which a confidential objection may be raised. There is nothing confidential about confusion by a "consumer." Third, Opposer admits to the existence of "written

records" of actual confusion, but its has failed to produce any.[1] Finally, Opposer acknowledges its "sales force" regularly receives inquiries that suggest actual confusion "believed to occur, on average, once a month," but has failed to name any of the individuals who comprise that sales force. Rather, Opposer provides the name of Andy Ketter, who may be knowledgeable about the sales force inquiries, but only by hearsay and not of personal knowledge. The Applicant is entitled to depose the "sales force" to determine the veracity of the Interrogatory supplemental answer.

5. Though Opposer has now produced some documents, it still has failed to identify which documents are responsive to which requests.[2]

6. Finally, Applicant opposes the cross motion. While the parties have agreed, in most part, to an appropriate protective order, Applicant objects to the two paragraphs at issue. Paragraph 2 does not permit the designation of certain information as protected. This paragraph likely will incite needless litigation to determine whether a party's putative claim that information is publicly available, is lawfully obtained, etc. is indeed true. Rather, either party should be able to designate information as protected, and allow Paragraph 14, which has been agreed to by the parties, to permit a non-designating party the right to contest the designation if, for example, he believes the information is truly publicly available, etc. Paragraph 2 only makes the process more litigious. The second paragraph of Paragraph 13 protects the parties against the well accepted principle that privilege can be waived. Applicant does not agree to forego

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[1]It is noteworthy that Opposer does not assert that the "written records" are proprietary or confidential.

[2]They are not as self evident as Opposer would lead this Board to believe. (Response, p. 11).

the concept of waiver, and there is no justification respectfully for the Board to mandate relinquishment of that defense to the prejudice of an unwilling party.[3]

WHEREFORE, Applicant respectfully requests that his motion for order compelling discovery be granted, and that the proposed protective order, without Paragraph 2 and the second paragraph of Paragraph 13, be entered as an order of this Board.

Respectfully submitted,

s/Richard S. Ross, Esq.
RICHARD S. ROSS, ESQ.
Fla. Bar. No. 436630
Attorney for Applicant
4801 South University Drive
Suite 237
Ft. Lauderdale, Florida 33328
Tel (954) 252-9110
Fax (954) 252-9192
E mail prodp@ix.netcom.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by United States Postal Service first class regular mail, and addressed to counsel for the Opposer this 8th day of March, 2007:

Brian J. Winterfeldt
Tricia McDermott Thompkins
Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, NW,
Suite 1000 South
Washington, DC 20005

s/Richard S. Ross, Esq.
Richard S. Ross, Esq.

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[3]Opposer does not cite any law that requires the Applicant to contract away the benefits he might receive if the Opposer waives a privilege.

EXHIBIT 1

MONSTERCOMMERCE, LLC v. Igor Lognikov
Opposition No. 91173189

Privilege Log

DATE	TYPE	SUBJECT	AUTHOR	RECIPIENT	CC	PRIV
8/14/2006	Email	FW: Infringement of MONSTER Family of Marks	Brian J. Winterfeldt, Esq.	Tricia M. Thompkins, Esq.		AC/WP
1/19/2007	Email	Mostermarketplace.mobi	Michael Mauseth, Esq.	Hara K. Jacobs, Esq.	Tricia M. Thompkins, Esq.	AC/WP
1/19/2007	Email	D2206-1472<monstermarketplace.mobi> Notification of Termination	Michael Mauseth, Esq.	Hara K. Jacobs, Esq.	Tricia M. Thompkins, Esq.	AC/WP
2/2/2007	Email	FW: [#109333807] Google Trademark AdWords Complaint - 'MONSTERCOMMERCE'	Linda Larsen	Michael Mauseth, Esq.	Bobby Turnage, Esq.	AC/WP
12/05/2006	Email	FW: Trademark Infringement	Meg Walker	Raj Malik, Esq.	Mary Ann Larson	AC/WP
12/05/2006	Email	RE: Trademark Infringement	Raj Malik, Esq.	Meg Walker	Mary Ann Larson; Linda Larsen	AC/WP
12/8/2006	Email	FW: Trademark Infringement	Meg Walker	Linda Larsen		AC/WP

EXHIBIT 2

Attorney Docket No. 42896.00.049336

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

In the matter of Application Serial No. 78/612,360
Published in the *Official Gazette* on May 30, 2006

TEMPLATEMONSTER

MONSTERCOMMERCE, LLC, Opposer, v. IGOR LOGNIKO, Applicant	))))))))))	Opposition No. 91173189

OPPOSER'S FIRST SUPPLEMENTAL RESPONSES AND
OBJECTIONS TO APPLICANT'S FIRST SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and the Trademark Rules of Practice, Opposer, MonsterCommerce, LLC. ("Opposer"), by its attorneys, Ballard Spahr Andrews & Ingersoll, LLP, hereby responds and objects to Applicant's First Set of Interrogatories ("Interrogatories") as follows:

Interrogatory 10:

State whether Opposer is aware of any instance in which any person, firm, corporation, association or other entity has been confused or has indicated by correspondence, oral statement, telephone call or otherwise that he, she or it has been confused, deceived, or mistaken as to the source or origin of Applicant's or Opposer's goods and/or services or other activities as a result of Opposer's concurrent use or planned use of the MONSTER marks and Applicant's TEMPLATEMONSTER mark; and

(a) describe the circumstances surrounding each such instance, including all persons present;

(b) state whether a record was made of any such instances and, if so, identify the records or any other documents relating to each such instance and the persons having knowledge and custody thereof.

RESPONSE:

Opposer objects to this Request as vague and ambiguous to the extent it refers to confusion about Opposer's planned use of the MONSTER marks and Applicant's TEMPLATEMONSTER mark. Opposer further objects to this Request to the extent it calls for proprietary and confidential customer information of Opposer, which Opposer will not disclose until a suitable protective order is entered by the Board.

Subject to and without waiving the foregoing objections, Opposer answers yes. Opposer states that its sales force regularly receives inquiries from persons and entities who believe that Applicant's TEMPLATEMONSTER templates are created specifically for Opposer's MONSTERCOMMERCE service. These inquiries typically arise during telephone conversations between consumers and Opposer's sales force and are believed to occur, on average, once a month. Opposer further states that persons and entities have also indicated to Opposer that they believe that Opposer and Applicant are the same entity. These statements have typically arisen during telephone conversations between consumers and Opposer's sales force.

Andy Ketter is knowledgeable about the foregoing consumer confusion experienced by Opposer and is also knowledgeable about any written records concerning such instances of confusion. Opposer further states that discovery is ongoing and reserves its right to supplement this interrogatory response.

By: _____

Brian J. Winterfeldt
Hara K. Jacobs
Tricia M. Thompkins
Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, NW,
Suite 1000 South
Washington, DC 20005

(202) 661-7650 Telephone
(202) 626-9065 Fax
Attorneys for MONSTERCOMMERCE, LLC

Dated: March 5, 2007

CERTIFICATE OF SERVICE

I, Hara K. Jacobs, hereby certify that on today's date, a true and correct copy of the foregoing Opposer's First Supplemental Responses and Objections to Applicant's First Set of Interrogatories was served by United States First Class mail, postage prepaid, on counsel for Applicant as set forth below:

Richard S. Ross, Esq.
Attorney for Applicant
4801 South University Drive
Suite 237
Ft. Lauderdale, Florida 33328
Tel (954) 252-9110
Fax (954) 252-9192
E mail prodp@ix.netcom.com

Dated: March 5, 2007