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

Proceeding	91217237
Party	Plaintiff WhatsApp Inc.
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Submission	Motion to Compel Discovery
Filer's Name	Karen A. Webb
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Signature	/kaw/
Date	09/08/2015
Attachments	WhatsApp Motion to Compel re WHYSUP Logo.pdf(262598 bytes)

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

WHATSAPP INC.,	§	
	§	
Opposer,	§	Mark: WHYSUP Logo
	§	-Serial No. 85/833,232
vs.	§	-Published January 7, 2014
	§	
WHYSUP, LLC,	§	Opposition No. 91217237
	§	
Applicant.	§	

**OPPOSER WHATSAPP INC.’S MOTION TO COMPEL
RESPONSES TO INTERROGATORIES AND DOCUMENT REQUESTS FROM
APPLICANT WHYSUP, LLC**

Pursuant to 37 CFR § 2.120(e)(1), Opposer WhatsApp Inc. (“WhatsApp”) moves the Board to compel Applicant WhysUp, LLC (“Applicant”) to produce documents and information responsive to WhatsApp’s Requests for Production and Interrogatories, without objections. As set forth in detail below and in the accompanying Declaration of Karen A. Webb (“Webb Decl.”), WhatsApp has made a concerted good faith effort to resolve this discovery dispute, but Applicant has failed to provide a single response to WhatsApp’s discovery requests.

WhatsApp notes that pursuant to Federal Rule of Civil Procedure 36(a), WhatsApp’s First Requests for Admission are deemed admitted and the factual matters therein are conclusively established due to Applicant’s failure to timely serve its responses.

INTRODUCTION

Applicant has prejudiced WhatsApp’s ability to prosecute this opposition by failing to satisfy its discovery obligations. WhatsApp served its first sets of Requests for Production,

Requests for Admission, and Interrogatories on Applicant on July 3, 2015. Since that time WhatsApp has expended considerable effort to obtain responses and responsive documents from Applicant with no results. With the close of discovery fast approaching, WhatsApp is left with no choice but to move this Board to compel Applicant to satisfy its obligations with respect to the Requests for Production and Interrogatories that are the subject of this motion. WhatsApp cannot effectively prosecute this opposition without such discovery.

PROCEDURAL AND FACTUAL BACKGROUND

On July 7, 2014, WhatsApp filed this Opposition against registration of the mark WHYSUP Logo (serial no. 85/833,232). Discovery opened in this proceeding on January 13, 2015.

WhatsApp served on Applicant a First Set of Requests for Admissions, a First Set of Interrogatories and a First Set of Requests for Production of Documents and Things on July 3, 2015 (collectively “Discovery Requests”). *See* Webb Decl. at ¶ 2, Exs. A-C. The deadline for responding to WhatsApp’s Discovery Requests was August 3, 2015. To date, Applicant has failed to respond to WhatsApp’s Discovery Requests.

In an email on August 7, 2015, WhatsApp reminded Applicant’s counsel that Applicant had failed to serve any response to WhatsApp’s Discovery Requests, and asked Applicant’s counsel to send such responses. *See* Webb Decl. at ¶ 4, Exs. D-E. Applicant’s counsel did not reply, so WhatsApp sent another email on August 14, 2015 to Applicant’s counsel noting that Applicant had still failed to serve any responses to WhatsApp’s Discovery Requests. *Id.* WhatsApp further highlighted that Applicant had waived any substantive objections to the Discovery Requests and asked to schedule a meet and confer to discuss. *Id.*

With no reply from Applicant's counsel, WhatsApp sent a third email on August 18, 2015 again requesting a time to schedule a meet and confer to discuss Applicant's failure to respond to WhatsApp's Discovery Requests and noting that if Applicant did not respond, WhatsApp would have no choice but to move forward with a Motion to Compel.

Applicant's counsel finally responded on August 20, 2015. Webb Decl. at ¶ 7, Ex. E. Applicant's counsel failed, however, to provide a time to schedule a meet and confer, did not serve any responses to WhatsApp's discovery requests, and stated that he has not been in contact with Applicant and would only provide an update when he hears back Applicant. WhatsApp promptly responded on August 20, 2015, again explaining for a third time that the parties needed to set a time to meet and confer and suggested a call for Monday, August 24.

Applicant's counsel again did not respond to WhatsApp's request for a meet and confer discussion on August 24. Instead, a day after the proposed meet and confer, Applicant offered to meet and confer on only Wednesday, August 26. Webb Decl. at ¶ 8, Ex. D. On August 26, 2015, WhatsApp and Applicant's counsel met and conferred via phone call. Applicant's counsel noted that he had not heard from Applicant for a couple months. WhatsApp reiterated that responses to its Discovery Requests were due on August 3, 2015 and without a firm date from Applicant to commit to providing substantive responses, that WhatsApp would have no choice but to move forward with a Motion to Compel or a Motion for Summary Judgment. Applicant's counsel said he would provide an update by August 28, 2015.

WhatsApp memorialized the parties' meet and confer discussions in an email exchange between WhatsApp and Applicant's counsel on August 26. Webb Decl. at ¶ 9, Ex. D. That same day, Applicant's counsel provided an update that he heard from Applicant and should have additional information to WhatsApp shortly. *Id.*

On August 28, 2015, WhatsApp sent an email to Applicant's counsel asking for the promised update of a firm commitment of substantive responses, noting that without such promise, WhatsApp would have no choice but to move forward with a Motion to Compel or a Motion for Summary Judgment. Webb Decl. at ¶ 10, Ex. D.

On August 29, 2015, Applicant's counsel responded that he has not heard from Applicant, but that he would follow-up and see if he could have something more concrete by August 31, 2015. Applicant's counsel did not provide any further information on August 31, 2015.

As of September 8, 2015, WhatsApp has not received any further reply to its reminder emails. Moreover, more than a month has passed since Applicant's responses to WhatsApp's Discovery Requests were due and Applicant has not responded to a single discovery request. Nor has Applicant requested any extensions from WhatsApp, or raised any objections to Applicant's Discovery Requests. It is time for Applicant to comply with its discovery obligations and put an end to its prolonged delays and prejudice to WhatsApp.

ARGUMENT

1. WhatsApp's Motion to Compel is Timely and Well-Supported.

Trademark Rule § 2.120(e)(1) provides, in relevant part, that “[i]f a party...fails to answer...any interrogatory, or fails to produce and permit the inspection and copying of any document or thing, the party...seeking discovery may file a motion to compel...an answer or production....” 37 C.F.R. § 2.120(e)(1); *see also* TBMP § 523. The moving party must (1) support its motion with a written statement showing a good faith effort to resolve the issues presented in the motion, (2) include with its motion a copy of any interrogatory or document

request which is the subject of the motion as well as any answer or proffer of production or objection made in response, and (3) file its motion before the start of the first testimony period.

37 C.F.R. § 2.120(e)(1).

2. The Board Should Issue an Order Compelling Applicant to Search for and Produce, Without Objection, Documents Responsive to Requests for Production; and to Serve, Without Objection, Complete Responses to Interrogatories

“Each party has a duty to make a good faith effort to satisfy the reasonable and appropriate needs of its adversary.” *Panda Travel Inc. v. Resort Option Enterprises, Inc.* 94 USPQ2d 1789, 1791 (TTAB 2009). Moreover, “[a] party which fails to respond to interrogatories or document requests during the time allowed for, and which is unable to show excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to the discovery request on its merits.” TBMP § 403.03; *see also Envirotech Corp. v. Compagnie Des Lampes*, 219 USPQ 448, 449 (TTAB 1979).

The Interrogatories and Requests for Production that are the subject of this motion seek documents and information that are reasonable and appropriate subjects for discovery, and to which Applicant has not responded. Further, because Applicant has offered no explanation for its continuing delay in fulfilling its obligations, it should be compelled to provide the requested discovery without objection.

CONCLUSION

For the foregoing reasons, WhatsApp respectfully requests that the Board enter an order compelling Applicant to search for thoroughly and produce, without objection, all documents responsive to WhatsApp’s Requests for Production and to serve, without objection, complete responses to WhatsApp’s Interrogatories.

Respectfully submitted,

Date: September 8, 2015

/Karen A. Webb/

Karen A. Webb
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

WHATSAPP INC.,	§	
	§	
Opposer,	§	Mark: WHYSUP Logo
	§	-Serial No. 85/833,232
vs.	§	-Published January 7, 2014
	§	
WHYSUP, LLC,	§	Opposition No. 91217237
	§	
Applicant.	§	

**DECLARATION OF KAREN A. WEBB IN SUPPORT OF OPPOSER WHATSAPP
INC.'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND
DOCUMENT REQUESTS FROM APPLICANT WHYSUP, LLC**

I, Karen A. Webb, declare:

1. I am a partner with the law firm Fenwick & West, LLP, counsel for Opposer WhatsApp Inc. (“WhatsApp”) in this matter. I submit this declaration in support of Opposer WhatsApp’s Motion to Compel Responses to Interrogatories and Document Requests from Applicant WhysUp, LLC. I make this declaration upon personal knowledge and, if called and sworn as a witness, I could and would testify as to the matters set forth herein.

2. On July 3, 2015, WhatsApp served Applicant with WhatsApp’s First Set of Interrogatories, First Set of Requests for Production of Documents and Things and First Set of Requests for Admission. Attached as **Exhibit A** is a true and correct copy of these interrogatories. Attached as **Exhibit B** is a true and correct copy of these requests for production of documents. Attached as **Exhibit C** is a true and correct copy of these requests for admissions. Exhibits A-C are collectively referred to as WhatsApp’s “Discovery Requests.”

3. Attached hereto as **Exhibit D** and **Exhibit E** is a true and correct copy of the email correspondence showing WhatsApp's efforts to resolve this discovery dispute without a motion to compel.

4. On August 7, 2015, four days after Applicant's responses to WhatsApp's first set of discovery requests were due, I emailed Applicant's counsel to remind him that Applicant had not served any response to WhatsApp's Discovery Requests, and asked Applicant's counsel to send such responses.

5. On August 14, 2015, I emailed Applicant's counsel with another reminder that Applicant had still failed to serve any responses to WhatsApp's Discovery Requests. I also explained that Applicant had now waived any substantive objections to the Discovery Requests and asked to schedule a meet and confer to discuss.

6. On August 18, 2015, I sent Applicant's counsel a second email asking to set up a time to meet and confer to discuss Applicant's failure to respond to WhatsApp's Discovery Requests and explained that if Applicant did not respond, WhatsApp would have no choice but to move forward with a Motion to Compel.

7. On August 20, 2015, Applicant's counsel sent me an email explaining that he has not heard from Applicant, but would let me know when he did hear from Applicant. I sent Applicant's counsel a reply email that same day, again explaining that we still needed to set a time to meet and confer and suggested a call for Monday, August 24.

8. On August 25, 2015, Applicant's counsel sent me an email proposing to meet and confer on Wednesday, August 26. I replied to Applicant's counsel that day to confirm the meet and confer time.

9. On August 26, 2015, I met and conferred with Applicant's counsel via phone call. Applicant's counsel noted that he had not heard from Applicant for a couple months. I asked if Applicant knew of the August 3rd deadline to respond to WhatsApp's Discovery Requests and Applicant's counsel confirmed that Applicant was aware. I explained that without a firm date from Applicant to commit to providing substantive responses, that WhatsApp would have no choice but to move forward with a Motion to Compel or a Motion for Summary Judgment. Applicant's counsel said he would get back to me with an update by August 28, 2015. I sent an email to Applicant's counsel to memorialize our meet and confer discussions. Later that same day, Applicant's counsel emailed me saying that he heard from Applicant and should have additional information to me shortly.

10. On August 28, 2015, I sent Applicant's counsel an email asking for an update on when Applicant would provide substantive responses, and reiterating again that without a firm commitment to provide substantive responses, WhatsApp would have no choice but to move forward with a Motion to Compel or a Motion for Summary Judgment.

11. On August 29, 2015, Applicant's counsel emailed me that he has not heard from Applicant, but that he would follow-up and see if he could have something more concrete by August 31, 2015.

12. To date, I still have not received any update from Applicant's counsel and Applicant has not served any responses to WhatsApp's discovery requests.

I declare under penalty of perjury that the foregoing statements are true and correct.

Executed in Mountain View, CA, this 8th day of September, 2015.

/Karen A. Webb/
Karen A. Webb
Attorney for Opposer
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650-988-8500
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Exhibit A

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

WHATSAPP INC.,	§	
	§	
Opposer,	§	Mark: WHYSUP Logo
	§	-Serial No. 85/833,232
vs.	§	-Published January 7, 2014
	§	
WHYSUP, LLC,	§	Opposition No. 91217237
	§	
Applicant.	§	

OPPOSER’S FIRST SET OF INTERROGATORIES TO APPLICANT

PROPOUNDING PARTY: OPPOSER WHATSAPP INC.

RESPONDING PARTY: APPLICANT WHYSUP, LLC

SET NUMBER: ONE

Pursuant to 37 C.F.R. § 2.120 and Federal Rule of Civil Procedure 33, Opposer WhatsApp Inc. (“WhatsApp”) requests that Applicant WhysUp, LLC (“Applicant”) respond to this First Set of Interrogatories (the “Interrogatories”) by answering each Interrogatory separately and completely in writing under oath within thirty (30) days from the date of service in accordance with the Definitions and Instructions set forth below.

I. DEFINITIONS

Notwithstanding any Definition below, each word, term, or phrase used in these Interrogatories is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure. As used in these Interrogatories, words in capital letters are defined as follows:

1. **YOU, YOUR, or YOURS** refer to Applicant and anyone acting on its behalf, including without limitation, its officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, licensees, and consultants.

WhatsApp Inc.’s First Set of Interrogatories

Opposition No. 91217237

2. COMMUNICATION is used in its broadest sense, and means any transmission of information from one PERSON or entity to another by any means, including without limitation written communications, telephone communications, in-person communications, email, instant messaging, and other electronic communications.

3. CONCERNING means constituting, relating to, reflecting, regarding, memorializing, embodying, referring to, pertaining to, commenting on, discussing, analyzing, considering, describing, containing, consisting of, connected to, indicating, evidencing, supporting, or refuting.

4. DOCUMENT or DOCUMENTS shall have the broadest meaning ascribed to those terms by Federal Rule of Civil Procedure 34, and include electronically stored information and tangible things, whose discovery is permitted under Rule 34(a)(1), and writings as defined by Rule 1001(a) of the Federal Rules of Evidence. A draft or non-identical copy is a separate “document” within the meaning of this term.

5. IDENTIFY or IDENTIFIED means to describe with particularity in full detail all relevant facts about the subject matter, including, but not limited to, names, relationships, functions, addresses, telephone number(s), purposes, objectives, results, and any other information which is relevant, or could lead to the discovery of admissible evidence.

(a) When used with respect to an individual, the term means to state the individual’s (i) full name, (ii) title, (iii) employer or business affiliation, (iv) present address, or if unknown, last known address, and (v) telephone number.

(b) When used with respect to a corporation or other form of business organization, the term means to state (i) the name and form of such corporation or business organization, (ii) the address of its principal place of business, (iii) its state of incorporation or formation, and (iv) the identity of all individuals who acted on its behalf in connection with the matter alleged in this OPPOSITION.

(c) When used with respect to a DOCUMENT, the term means to state (i) the

identity of the person(s) who authored the DOCUMENT, (ii) the identity of the sender(s) of the DOCUMENT, if any, (iii) its title or a description of the general nature of its subject matter, (iv) the identity of all actual or intended recipients, if any, (v) the date when the DOCUMENT was created and last modified, and (vi) the location of each copy of the DOCUMENT and the IDENTITY of its present custodian.

6. PERSON means any natural person, business or other legal entity.

7. OPPOSITION refers to Opposition No. 91217237, filed by WhatsApp on July 7, 2014.

8. YOUR ANSWER refers to the Answer YOU filed in this Opposition on December 11, 2014.

9. WHYSUP LOGO MARK refers to the mark reflected in Application Serial No. 85/833,232, filed on February 5, 2013.

10. The WHATSAPP MARKS refers collectively to all of WhatsApp's marks that consist of or incorporate the term WHATSAPP, including without limitation the WHATSAPP marks identified in U.S. Reg. Nos. 34,083,272 and 3,939,463.

II. INSTRUCTIONS

1. YOU are requested to answer each Interrogatory set forth below separately and completely in writing under oath. YOUR response hereto is to be signed and verified by the PERSON making it, and the objections signed by the attorney making them, as required by Federal Rule of Civil Procedure 33(b)(5) and described in section 405.04(c) of the Trademark Trial and Appeal Board Manual of Procedure ("T.B.M.P.").

2. If any of the Interrogatories cannot be answered in full, YOU must answer to the extent possible, specifying the reasons for YOUR inability to answer the remainder of the Interrogatory and stating whatever information, knowledge, or belief YOU do have CONCERNING the unanswered portion thereof.

3. Each Interrogatory shall be answered fully unless it is objected to in good faith, in

WhatsApp Inc.'s First Set of Interrogatories

Opposition No. 91217237

which event the reasons for YOUR objection shall be stated in detail. If an objection pertains to only a portion of an Interrogatory, or a word, phrase or clause contained within it, YOU are required to state YOUR objection to that portion only and to respond to the remainder of the Interrogatory, using YOUR best efforts to do so.

4. If, in answering these Interrogatories, YOU encounter any ambiguities when construing an Interrogatory, Instruction, or Definition, YOU shall set forth in YOUR answer the matter deemed ambiguous and the construction used in answering.

5. It is intended that these Interrogatories will not solicit any material protected either by the attorney-client privilege or by the work product doctrine.

6. Wherever used herein, the present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. “All” means “any and all.” “Any” means “any and all.” “Including” means “including but not limited to.” “And” and “or” encompass both “and” and “or.” Words in the masculine, feminine, or neuter form shall include each of the other genders.

III. INTERROGATORIES

INTERROGATORY NO. 1:

IDENTIFY each PERSON with knowledge of YOUR selection and adoption of the WHYSUP LOGO MARK.

INTERROGATORY NO. 2:

IDENTIFY each PERSON who had any involvement with or any knowledge of facts relating to YOUR efforts to register the WHYSUP LOGO MARK with the United States Patent and Trademark Office.

INTERROGATORY NO. 3:

Describe in detail the facts and circumstances surrounding YOUR selection and adoption of the WHYSUP LOGO MARK.

WhatsApp Inc.’s First Set of Interrogatories

Opposition No. 91217237

INTERROGATORY NO. 4:

IDENTIFY all goods and/or services in connection with which YOU have used or are currently using the WHYSUP LOGO MARK.

INTERROGATORY NO. 5:

Describe in detail all goods and/or services in connection with which YOU intend to use the WHYSUP LOGO MARK in the future.

INTERROGATORY NO. 6:

For each good and service IDENTIFIED in response to Interrogatory No. 5, IDENTIFY the date(s) when YOU first used the WHYSUP LOGO MARK within the U.S.

INTERROGATORY NO. 7:

IDENTIFY the channels of trade for YOUR goods or services that have been or are intended to be distributed, sold, or marketed under the WHYSUP LOGO MARK.

INTERROGATORY NO. 8:

IDENTIFY and describe in detail YOUR target customer markets for YOUR goods and services that have been or are intended to be distributed, sold, or marketed under the WHYSUP LOGO MARK.

INTERROGATORY NO. 9:

IDENTIFY and describe in detail any instances where a PERSON inquired about or assumed an association or connection between YOU and WhatsApp, including without limitation any COMMUNICATIONS YOU received that may have been intended for WhatsApp.

INTERROGATORY NO. 10:

IDENTIFY and describe in detail any instances of consumer confusion, mistake, deception, or association of any kind between YOU and WhatsApp, or between YOUR goods and services and WhatsApp's goods and services, including without limitation any COMMUNICATIONS received from consumers evidencing any actual confusion.

INTERROGATORY NO. 11:

Describe in detail the facts and circumstances under which YOU first heard of or learned of WhatsApp, including without limitation the date that YOU first heard of or learned of goods or services offered in connection with any of the WHATSAPP MARKS.

INTERROGATORY NO. 12:

IDENTIFY the prices charged or intended to be charged for each good or service YOU have offered, currently offer, or intend to offer in connection with the WHYSUP LOGO MARK.

INTERROGATORY NO. 13:

Describe in detail any actual or anticipated plans that YOU have to expand the channels of trade for any goods or services offered by YOU in connection with the WHYSUP LOGO MARK.

INTERROGATORY NO. 14:

Describe in detail any actual or anticipated plans that YOU have to expand the types of goods and services to be offered by YOU in connection with the WHYSUP LOGO MARK.

INTERROGATORY NO. 15:

For each good and service IDENTIFIED in response to Interrogatory No. 5, describe in detail the manner in which the good or service is or has been marketed, advertised, and/or promoted in the U.S.

INTERROGATORY NO. 16:

Describe in detail any advertising associated with the WHYSUP LOGO MARK within the U.S., including without limitation the nature of such advertising and the geographic scope of such advertising.

WhatsApp Inc.'s First Set of Interrogatories

INTERROGATORY NO. 17:

IDENTIFY all facts YOU intend to rely upon in support of YOUR defense against this OPPOSITION.

INTERROGATORY NO. 18:

IDENTIFY all facts YOU intend to rely upon in support of YOUR ANSWER.

INTERROGATORY NO. 19:

Describe in detail any basis for your first affirmative defense, including without limitation all legal theories and doctrines, all facts which support such contentions, and the identity of each Person(s) with knowledge of such facts.

INTERROGATORY NO. 20:

Describe in detail any basis for your second affirmative defense, including without limitation all legal theories and doctrines, all facts which support such contentions, and the identity of each Person(s) with knowledge of such facts.

INTERROGATORY NO. 21:

Describe in detail any basis for your third affirmative defense, including without limitation all legal theories and doctrines, all facts which support such contentions, and the identity of each Person(s) with knowledge of such facts.

INTERROGATORY NO. 22:

Describe in detail any basis for your fourth affirmative defense, including without limitation all legal theories and doctrines, all facts which support such contentions, and the identity of each Person(s) with knowledge of such facts.

INTERROGATORY NO. 23:

Describe in detail any basis for your fifth affirmative defense, including without limitation all legal theories and doctrines, all facts which support such contentions, and the identity of each Person(s) with knowledge of such facts.

INTERROGATORY NO. 24:

WhatsApp Inc.'s First Set of Interrogatories

Opposition No. 91217237

Exhibit B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Opposer,	§	Mark: WHYSUP Logo
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WHYSUP, LLC,	§	Opposition No. 91217237
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Applicant.	§	

**OPPOSER’S FIRST SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS TO APPLICANT**

PROPOUNDING PARTY: OPPOSER WHATSAPP INC.

RESPONDING PARTY: APPLICANT WHYSUP, LLC

SET NUMBER: ONE

Pursuant to 37 C.F.R. § 2.120 and Federal Rule of Civil Procedure 34, Opposer WhatsApp Inc. (“WhatsApp”) hereby requests that Applicant WhysUp, LLC (“Applicant”) respond to this First Set of Requests for Production of Documents and Things (“Requests”) within thirty (30) days of service hereof and in accordance with the Definitions and Instructions set forth below.

I. DEFINITIONS

Notwithstanding any Definition below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure. As used in these Requests, words in capital letters are defined as follows:

1. YOU, YOUR, or YOURS refer to Applicant and anyone acting on its behalf, including without limitation, its officers, directors, employees, partners, corporate parent,

subsidiaries, affiliates, attorneys, accountants, licensees, and consultants.

2. COMMUNICATION is used in its broadest sense, and means any transmission of information from one PERSON or entity to another by any means, including without limitation written communications, telephone communications, in-person communications, email, instant messaging, and other electronic communications.

3. CONCERNING means constituting, relating to, reflecting, regarding, memorializing, identifying, embodying, referring to, pertaining to, commenting on, discussing, analyzing, considering, describing, containing, consisting of, connected to, indicating, evidencing, supporting, or refuting.

4. DOCUMENT or DOCUMENTS shall have the broadest meaning ascribed to those terms by Federal Rule of Civil Procedure 34, and include electronically stored information and tangible things, whose discovery is permitted under Rule 34(a)(1), and writings as defined by Rule 1001(a) of the Federal Rules of Evidence. A draft or non-identical copy is a separate “document” within the meaning of this term.

5. PERSON means any natural person, business or other legal entity.

6. OPPOSITION refers to Opposition No. 91217237, filed by WhatsApp on July 7, 2014.

7. YOUR ANSWER refers to the Answer YOU filed in this Opposition on December 11, 2014.

8. WHYSUP LOGO MARK refers to the mark reflected in Application Serial No. 85/833,232, filed on February 5, 2013.

9. WHATSAPP MARKS refers collectively to all of WhatsApp’s marks that consist of or incorporate the term WHATSAPP, including without limitation the WHATSAPP marks identified in U.S. Reg. Nos. 4,083,272 and 3,939,463.

10. A Request to provide DOCUMENTS that support something means relating to, referring to, describing, referencing, evidencing, concerning or constituting.

II. INSTRUCTIONS

1. YOU shall produce all non-privileged DOCUMENTS or tangible things in YOUR possession, custody, or control that are responsive to these Requests. It is intended that these Requests will not solicit the production of any material protected either by the attorney-client privilege or by the work product doctrine.

2. If YOU object to part of a Request and refuse to respond to that part, YOU shall produce all DOCUMENTS called for which are not subject to that objection. If YOU object to the scope or time period of a Request, YOU shall state YOUR objection and respond to the Request for the scope or time period YOU believe is appropriate.

3. If, in responding to these Requests, YOU encounter any ambiguities when construing a Request or Definition, YOU shall set forth in YOUR response the matter deemed ambiguous and the construction used in responding.

4. Each DOCUMENT or tangible thing produced in response to these Requests shall be produced as it is kept in the usual course of business, including file folders, binders, notebooks, and other devices by which such papers or things may be organized or separated, or it shall be organized and labeled to correspond with the Requests to which it is responsive. All DOCUMENTS that are physically or electronically attached to each other shall be produced in that form and designated accordingly in an electronic production.

5. DOCUMENTS should be produced in a form pursuant to a production protocol to be agreed upon by the parties, in a form in which it is ordinarily maintained (*e.g.*, native form), or in a reasonably usable form (*e.g.*, TIFF images with Concordance-compatible load files).

6. If there are no DOCUMENTS or things responsive to any particular Request, YOU are requested to indicate the same in writing.

7. These Requests are continuing so as to require prompt supplemental responses as required under Federal Rule of Civil Procedure 26(e) up to and including the time of trial of this OPPOSITION. If YOU come into possession, custody, or control of responsive DOCUMENTS or

things after the initial production, YOU should supplement the production by promptly producing such DOCUMENTS or things.

8. When a DOCUMENT contains both privileged and non-privileged material, the non-privileged material must be disclosed to the fullest extent possible without disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in a DOCUMENT, the party claiming the privilege must clearly indicate the portions as to which the privilege is claimed. When a DOCUMENT has been redacted or altered in any fashion, YOU shall identify as to each document the reason for the redaction or alteration, the date of the redaction or alteration, and the individual performing the redaction or alteration. Any redaction must be clearly visible on the redacted DOCUMENT.

9. Whenever used herein, the present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. “All” means “any and all”; “any” means “any and all.” “Including” means “including but not limited to.” “And” and “or” encompasses both “and” and “or.” Words in the masculine, feminine, or neutral form shall include each of the other genders.

III. REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All DOCUMENTS that refer to or support allegations and denials made by YOU in YOUR ANSWER.

REQUEST FOR PRODUCTION NO. 2:

All DOCUMENTS YOU used, identified, relied upon, or referred to when answering WhatsApp’s First Set of Interrogatories or any other discovery requests propounded by WhatsApp.

REQUEST FOR PRODUCTION NO. 3:

A specimen sufficient to show any use of the WHYSUP LOGO MARK with each good or

WhatsApp Inc.’s First Set of Requests for Production

Opposition No. 91217237

service identified in response to Interrogatory No. 5 of WhatsApp's First Set of Interrogatories.

REQUEST FOR PRODUCTION NO. 4:

DOCUMENTS sufficient to show YOUR *bona fide* intent to use the WHYSUP LOGO MARK.

REQUEST FOR PRODUCTION NO. 5:

DOCUMENTS sufficient to show the prices YOU intend to charge for each good or service YOU plan to offer in connection with the WHYSUP LOGO MARK.

REQUEST FOR PRODUCTION NO. 6:

All DOCUMENTS CONCERNING the adoption of the WHYSUP LOGO MARK by YOU or other users authorized by YOU, including without limitation all DOCUMENTS and things referring to or evidencing the origination, selection, and development of the WHYSUP LOGO MARK.

REQUEST FOR PRODUCTION NO. 7:

DOCUMENTS sufficient to show COMMUNICATIONS CONCERNING YOUR past, current, or planned future use of the WHYSUP LOGO MARK within the U.S.

REQUEST FOR PRODUCTION NO. 8:

DOCUMENTS sufficient to show YOUR use of the WHYSUP LOGO MARK in connection with YOUR plans or preparations to develop a good and/or service.

REQUEST FOR PRODUCTION NO. 9:

DOCUMENTS sufficient to show YOUR use of the WHYSUP LOGO MARK in connection with YOUR sale, advertising, or promotion of a good and/or service.

REQUEST FOR PRODUCTION NO. 10:

DOCUMENTS sufficient to show the target market of goods and/or services sold or offered for sale in connection with the WHYSUP LOGO MARK.

REQUEST FOR PRODUCTION NO. 11:

DOCUMENTS sufficient to show the target market for the goods and/or services planned to be sold or offered for sale in the future in connection with the WHYSUP LOGO MARK.

REQUEST FOR PRODUCTION NO. 12:

All advertising and promotional DOCUMENTS CONCERNING the goods and/or services offered, sold, or planned to be sold in the future, in connection with the WHYSUP LOGO MARK.

REQUEST FOR PRODUCTION NO. 13:

All marketing plans and related DOCUMENTS CONCERNING goods and/or services sold, to be sold, advertised, or to be advertised by YOU in connection with the WHYSUP LOGO MARK.

REQUEST FOR PRODUCTION NO. 14:

DOCUMENTS sufficient to identify the channels of trade through which YOU sell, plan to sell, advertise, or plan to advertise each good and/or service offered or intended to be offered in connection with the WHYSUP LOGO MARK.

REQUEST FOR PRODUCTION NO. 15:

All DOCUMENTS CONCERNING any instances of actual confusion, mistake, deception, or association of any kind between YOU and WhatsApp or between YOUR goods or services and WhatsApp's goods or services.

REQUEST FOR PRODUCTION NO. 16:

All DOCUMENTS CONCERNING the past, current, or planned future advertisement, marketing, or promotion of YOUR goods and/or services under the WHYSUP LOGO MARK.

REQUEST FOR PRODUCTION NO. 17:

DOCUMENTS sufficient to show the identities of individuals who have ever been involved with the marketing of any goods and/or services offered under the WHYSUP LOGO MARK.

REQUEST FOR PRODUCTION NO. 18:

DOCUMENTS sufficient to show YOUR organizational structure from 2012 to the present, including organization charts.

REQUEST FOR PRODUCTION NO. 19:

For each month that YOU have offered goods or services under the WHYSUP LOGO MARK, DOCUMENTS sufficient to show the total number of visitors to ANY website YOU own or

WhatsApp Inc.'s First Set of Requests for Production

control displaying the WHYSUP LOGO MARK.

REQUEST FOR PRODUCTION No. 20:

All DOCUMENTS CONCERNING COMMUNICATIONS between YOU and WhatsApp or any current or former WhatsApp employee or agent, regarding the WHYSUP LOGO MARK.

REQUEST FOR PRODUCTION No. 21:

All DOCUMENTS that support or refer to YOUR defense to this OPPOSITION.

REQUEST FOR PRODUCTION No. 22:

All DOCUMENTS CONCERNING the WHATSAPP MARKS, including without limitation any COMMUNICATION CONCERNING the trademark rights of WhatsApp in the WHATSAPP MARKS.

REQUEST FOR PRODUCTION No. 23:

All DOCUMENTS, including without limitation all COMMUNICATIONS, CONCERNING WhatsApp.

REQUEST FOR PRODUCTION No. 24:

All DOCUMENTS, including without limitation all COMMUNICATIONS, CONCERNING Facebook Inc.

REQUEST FOR PRODUCTION No. 25:

All DOCUMENTS upon which YOU intend to rely in this matter.

Respectfully submitted,

Date: July 3, 2015

/Karen A. Webb/

Karen A. Webb
Emily M. Gische
Attorneys for Opposer
FENWICK & WEST LLP
801 California Street
Mountain View, CA 94041
650-988-8500
trademarks@fenwick.com

Exhibit C

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

WHATSAPP INC.,	§	
	§	
Opposer,	§	Mark: WHYSUP Logo
	§	-Serial No. 85/833,232
vs.	§	-Published January 7, 2014
	§	
WHYSUP, LLC,	§	Opposition No. 91217237
	§	
Applicant.	§	

OPPOSER’S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT

PROPOUNDING PARTY: OPPOSER WHATSAPP INC.

RESPONDING PARTY: APPLICANT WHYSUP, LLC

SET NUMBER: ONE

Pursuant to Federal Rules of Civil Procedure 26 and 36 and 37 CFR § 2.120, Opposer WhatsApp Inc. (“WhatsApp”) hereby requests that Applicant WhysUp, LLC (“Applicant”) admit, separately and in writing under oath within 30 days of service hereof, each of the matters of fact set forth below (“Requests”) in accordance with the following Instructions and Definitions.

I. DEFINITIONS

Notwithstanding any definition below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure. As used in these Requests, words in capital letters are defined as follows:

- 1.** **YOU, YOUR, or YOURS** refer to Applicant and anyone acting on its behalf, including without limitation, its officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, licensees, and consultants.
- 2.** **COMMUNICATION** is used in its broadest sense, and means any transmission of

information from one PERSON or entity to another by any means, including without limitation written communications, telephone communications, in-person communications, email, instant messaging, and other electronic communications.

3. CONCERNING means constituting, relating to, reflecting, regarding, memorializing, identifying, embodying, referring to, pertaining to, commenting on, discussing, analyzing, considering, describing, containing, consisting of, connected to, indicating, evidencing, supporting, or refuting.

4. PERSON means any natural person, business or other legal entity.

5. OPPOSITION refers to Opposition No. 91217237, filed by WhatsApp on July 7, 2014.

6. YOUR ANSWER refers to the Answer YOU filed in this Opposition on December 11, 2014.

7. WHYSUP LOGO MARK refers to the mark reflected in Application Serial No. 85/833,232, filed on February 5, 2013.

8. WHATSAPP MARKS refers collectively to all of WhatsApp's marks that consist of or incorporate the term WHATSAPP, including without limitation the WHATSAPP marks identified in U.S. Reg. Nos. 4,083,272 and 3,939,463.

II. INSTRUCTIONS

1. WhatsApp requests that YOU admit or deny the truth of each statement or fact, application of law to fact, or opinions about either, set forth in the Requests below.

2. To the extent that YOU do not respond with either an unqualified admission or an objection (the reasons for which must be stated), YOU shall specifically deny the matter and set forth in detail the reasons why YOU cannot truthfully admit the matter. Any such denial shall fairly meet the substance of the Request, and when good faith requires that YOU qualify an answer or deny only a part of the matter in which any admission is requested, YOU shall specify so much of it as is true and qualify or deny the remainder.

WhatsApp Inc.'s First Set of Requests for Admission

Opposition No. 91217237

3. If, in responding to these Requests, YOU encounter any ambiguities when construing a Request, Instruction, or Definition, YOU shall set forth in YOUR response the matter deemed ambiguous and the construction used in responding.

4. YOU may not give lack of information or knowledge as the reason for failure to admit or deny unless YOU state that YOU have made reasonable inquiry and that the information known or readily obtainable by YOU is insufficient to enable YOU to admit or deny.

5. The fact that a Request covers a matter which YOU believe presents a genuine issue for trial may not, on that ground alone, provide the basis for an objection.

6. Any Request set forth below to which there has not been an adequate and timely response may be deemed admitted and, therefore, conclusively established for purposes of this OPPOSITION.

7. These Requests are continuing in nature and YOUR responses to them are to be promptly supplemented or amended if, after the time of YOUR initial responses, YOU learn that any response is or has become in some material respect incomplete or incorrect, to the full extent provided for by Federal Rule of Civil Procedure 26(e).

III. REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Admit that YOU were aware of WhatsApp prior to YOUR selection and adoption of the WHYSUP LOGO MARK.

REQUEST FOR ADMISSION NO. 2:

Admit that YOU were aware of one or more of the WHATSAPP MARKS at the time that YOUR application to register the WHYSUP LOGO MARK was filed with the United States Patent and Trademark Office.

REQUEST FOR ADMISSION NO. 3:

Admit that YOU did not conduct a search of potentially similar trademarks prior to filing YOUR application to register the WHYSUP LOGO MARK with the United States Patent and Trademark Office.

REQUEST FOR ADMISSION NO. 4:

Admit that YOU did conduct a search of potentially similar trademarks prior to filing YOUR application to register the WHYSUP LOGO MARK with the United States Patent and Trademark Office.

REQUEST FOR ADMISSION NO. 5:

Admit that YOU were aware that one or more of the WHATSAPP MARKS were registered in the United States prior to filing YOUR application to register the WHYSUP LOGO MARK with the United States Patent and Trademark Office.

REQUEST FOR ADMISSION NO. 6:

Admit that YOU did not seek legal advice CONCERNING YOUR decision to adopt the WHYSUP LOGO MARK prior to filing YOUR application to register the WHYSUP LOGO MARK with the United States Patent and Trademark Office.

REQUEST FOR ADMISSION NO. 7:

Admit that WhatsApp did not consent to YOUR application to register the WHYSUP LOGO MARK with the United States Patent and Trademark Office.

REQUEST FOR ADMISSION NO. 8:

Admit that YOU are not currently licensed or otherwise authorized by WhatsApp to use any of the WHATSAPP MARKS in connection with the goods and services you intend to offer under the WHYSUP LOGO MARK.

REQUEST FOR ADMISSION NO. 9:

Admit that YOU do not contest WhatsApp's ownership of the WHATSAPP MARKS.

REQUEST FOR ADMISSION NO. 10:

Admit that YOU do not contest the validity of any of WhatsApp's registrations for the WHATSAPP MARKS.

REQUEST FOR ADMISSION NO. 11:

Admit that the WHATSAPP MARKS are well known.

REQUEST FOR ADMISSION NO. 12:

Admit that one or more of the WHATSAPP MARKS was well known at the time YOU filed YOUR application to register the WHYSUP LOGO MARK with the United States Patent and Trademark Office.

REQUEST FOR ADMISSION NO. 13:

Admit that the WHATSAPP MARKS are famous.

REQUEST FOR ADMISSION NO. 14:

Admit that one or more of the WHATSAPP MARKS was famous at the time YOU filed YOUR application to register the WHYSUP LOGO MARK with the United States Patent and Trademark Office.

REQUEST FOR ADMISSION NO. 15:

Admit that the WHYSUP LOGO MARK and the WHATSAPP MARKS are similar in visual appearance.

REQUEST FOR ADMISSION NO. 16:

Admit that the WHYSUP LOGO MARK and the WHATSAPP MARKS are similar in sound.

REQUEST FOR ADMISSION NO. 17:

Admit that there are two syllables in the pronunciation of the WHYSUP LOGO MARK.

REQUEST FOR ADMISSION NO. 18:

Admit that there are two syllables in the pronunciation of the WHATSAPP MARK.

REQUEST FOR ADMISSION NO. 19:

Admit that the WHYSUP LOGO MARK and the WHATSAPP MARKS have a similar meaning.

REQUEST FOR ADMISSION NO. 20:

Admit that the WHYSUP LOGO MARK and the WHATSAPP MARKS create a similar commercial impression.

REQUEST FOR ADMISSION NO. 21:

Admit that the WHYSUP LOGO MARK and the WHATSAPP MARKS both begin with the letters “WH”.

REQUEST FOR ADMISSION NO. 22:

Admit that the WHYSUP LOGO MARK and the WHATSAPP MARKS both have similar endings, “SUP” and “SAPP.”

REQUEST FOR ADMISSION NO. 23:

Admit that the WHYSUP LOGO MARK and the WHATSAPP MARKS both begin with interrogatory words.

REQUEST FOR ADMISSION NO. 24:

Admit that the WHYSUP LOGO MARK and the WHATSAPP MARKS both convey the question “What’s Up?” to the consumer.

REQUEST FOR ADMISSION NO. 25:

Admit that YOU own the domain <www.whysup.com>.

REQUEST FOR ADMISSION NO. 26:

Admit that YOU intend to offer messaging services through a website located at <www.whysup.com>.

REQUEST FOR ADMISSION NO. 27:

Admit that WhatsApp offers messaging services through the WhatsApp website located at <www.whatsapp.com>.

REQUEST FOR ADMISSION NO. 28:

Admit that YOU intend to offer an application service provider.

REQUEST FOR ADMISSION NO. 29:

Admit that YOU intend to offer telecommunications services.

REQUEST FOR ADMISSION NO. 30:

Admit that YOU intend to offer social networking services.

REQUEST FOR ADMISSION NO. 31:

Admit that the services YOU intend to offer under the WHYSUP LOGO MARK are similar to the services that WhatsApp offers under the WHATSAPP MARKS.

REQUEST FOR ADMISSION NO. 32:

Admit that the goods and services YOU intend to offer under the WHYSUP LOGO MARK will be advertised on the Internet.

REQUEST FOR ADMISSION NO. 33:

Admit that the goods and services YOU intend to offer under the WHYSUP LOGO MARK are advertised on Facebook.

REQUEST FOR ADMISSION NO. 34:

Admit that the goods and services YOU intend to offer under the WHYSUP LOGO MARK will be made available to consumers over the Internet.

REQUEST FOR ADMISSION NO. 35:

Admit that the goods and services YOU intend to offer under the WHYSUP LOGO MARK will be marketed, advertised, and offered to users of WhatsApp's services.

REQUEST FOR ADMISSION NO. 36:

Admit that the goods and services YOU intend to offer under the WHYSUP LOGO MARK will be marketed, advertised, and offered to the general public.

REQUEST FOR ADMISSION NO. 37:

Admit that the goods and services YOU intend to offer under the WHYSUP LOGO MARK will be marketed, advertised, and offered to unsophisticated consumers.

REQUEST FOR ADMISSION NO. 38:

Admit that the goods and services YOU intend to offer under the WHYSUP LOGO MARK will be offered for free.

REQUEST FOR ADMISSION NO. 39:

Admit that the goods and services YOU intend to offer under the WHYSUP LOGO MARK will be offered for less than \$20.00.

REQUEST FOR ADMISSION NO. 40:

Admit that U.S. Trademark Application Serial No. 85/833,232 does not contain any limitation on the channels of trade.

Exhibit D

From: [Kuzas Neu](#)
To: [Karen Webb](#)
Cc: [Emily Gische](#); [Anthony Olivas](#); [tm](#); [Eric Ball](#)
Subject: Re: WhysUp - WhatsApp Opposition
Date: Saturday, August 29, 2015 7:32:26 AM

Karen,

Apologies Friday came and went without additional communication from my client. I will follow up today and see if I can have something more concrete on Monday for you.

Cheers,
Jeff

732-978-4053
Jeff.neu@kuzasneu.com

Please excuse the typos. Autocorrect is sadly faster than I am.

On Aug 28, 2015, at 5:29 PM, Karen Webb <KWebb@fenwick.com> wrote:

Jeff,

Just checking in to get the update from your clients about providing the substantive responses to our discovery requests that were due on August 3rd. Again, without a firm commitment of substantive responses, we'll have no choice but to move forward with a Motion for Summary Judgment or Motion to Compel.

Regards,
Karen

From: Jeffrey Neu [<mailto:jeff.neu@kuzasneu.com>]
Sent: Wednesday, August 26, 2015 11:32 AM
To: Karen Webb
Cc: Emily Gische; Anthony Olivas; tm; Eric Ball
Subject: RE: WhysUp - WhatsApp Opposition

Karen,

I have just heard from my clients today and should have additional information from you shortly. Apparently they were out of the country for the past month or two.

Cheers,
Jeff

732-978-4053
jeff.neu@kuzasneu.com

From: Karen Webb [<mailto:KWebb@fenwick.com>]
Sent: Wednesday, August 26, 2015 1:43 PM
To: 'Jeffrey Neu' <jeff.neu@kuzasneu.com>
Cc: Emily Gische <egische@fenwick.com>; Anthony Olivas <aolivas@fenwick.com>;
tm <tm@fenwick.com>; Eric Ball <EBall@fenwick.com>
Subject: RE: WhysUp - WhatsApp Opposition

Hi Jeff,

Thanks for the meet and confer call today. I understand that your client hasn't provided you any information in response to our discovery requests. As discussed, I look forward to hearing from you by this Friday as to your follow up with your client to confirm when or if they'll provide substantive responses since they were due on August 3rd and we haven't received or heard anything. Without a firm commitment of substantive responses, we'll have no choice but to move forward with a Motion for Summary Judgment or Motion to Compel.

I look forward to hearing from you.

Regards,
Karen

From: Jeffrey Neu [<mailto:jeff.neu@kuzasneu.com>]
Sent: Wednesday, August 26, 2015 9:57 AM
To: Karen Webb
Cc: Emily Gische; Anthony Olivas; tm; Eric Ball
Subject: RE: WhysUp - WhatsApp Opposition

Hi Karen,

Yes I can do 1:30pm. Feel free to call me at the number below.

Cheers,
Jeff

732-978-4053
jeff.neu@kuzasneu.com

From: Karen Webb [<mailto:KWebb@fenwick.com>]
Sent: Wednesday, August 26, 2015 12:56 PM
To: 'Jeffrey Neu' <jeff.neu@kuzasneu.com>
Cc: Emily Gische <egische@fenwick.com>; Anthony Olivas <aolivas@fenwick.com>;
tm <tm@fenwick.com>; Eric Ball <EBall@fenwick.com>
Subject: RE: WhysUp - WhatsApp Opposition
Importance: High

Jeff,

Please confirm if you can have a call today at 10:30 (Pacific)/1:30pm (Eastern).
Please also let me know the best number to reach you at.

Regards,
Karen

From: Karen Webb
Sent: Tuesday, August 25, 2015 3:48 PM
To: 'Jeffrey Neu'
Cc: Emily Gische; Anthony Olivas; tm; Eric Ball
Subject: RE: WhysUp - WhatsApp Opposition

Jeff,

Yes, a call tomorrow works for me. Can you do a call at 10:30 (Pacific)/1:30pm (Eastern)? Let me know if that works for you and the best number to reach you at.

Regards,
Karen

From: Jeffrey Neu [<mailto:jeff.neu@kuzasneu.com>]
Sent: Tuesday, August 25, 2015 10:45 AM
To: Karen Webb
Cc: Emily Gische; Anthony Olivas; tm
Subject: RE: WhysUp - WhatsApp Opposition

Karen,

I am going out of town on Thursday for a week. Do you have time to discuss tomorrow (Wed.?)

Cheers,
Jeff

732-978-4053
jeff.neu@kuzasneu.com

From: Karen Webb [<mailto:KWebb@fenwick.com>]
Sent: Thursday, August 20, 2015 7:52 PM
To: 'jeff.neu@kuzasneu.com' <jeff.neu@kuzasneu.com>
Cc: Emily Gische <egische@fenwick.com>; Anthony Olivas <aolivas@fenwick.com>; tm <tm@fenwick.com>
Subject: RE: WhysUp - WhatsApp Opposition

Hi Jeff,

Thanks for the email today. We still need to meet and confer – are you free on Monday, August 24th at 10am (Pacific)/1pm (Eastern)? If so, let me know the best number to reach you at.

Regards,
Karen

From: Karen Webb
Sent: Tuesday, August 18, 2015 4:06 PM
To: 'jeff.neu@kuzasneu.com'
Cc: Emily Gische; Anthony Olivas; tm
Subject: RE: WhysUp - WhatsApp Opposition

Hi Jeff,

I still haven't heard from you regarding my emails below. Again, please let me know when you are available for a meet and confer regarding Whysup's failure to respond to WhatsApp's discovery requests. We would like to resolve this with you, but if I don't hear from you by the end of this week, we'll no choice but to move forward with a Motion to Compel.

Regards,
Karen

From: Karen Webb
Sent: Friday, August 14, 2015 2:36 PM
To: 'jeff.neu@kuzasneu.com'
Cc: Emily Gische; Anthony Olivas; tm
Subject: RE: WhysUp - WhatsApp Opposition

Hi Jeff,

I have not received a response to my email below or any discovery responses from Whysup. At this point, Whysup has waived any substantive objections to the discovery requests. See TBMP 403.03. Please let me know when you are available for a meet and confer regarding Whysup's failure to respond to the discovery requests.

Please also confirm that your client consents to our consolidation request. I look forward to hearing from you.

Regards,
Karen

From: Karen Webb

Sent: Friday, August 07, 2015 2:42 PM
To: 'jeff.neu@kuzasneu.com'
Cc: Emily Gische; Anthony Olivas; tm
Subject: RE: WhysUp - WhatsApp Opposition

Hi Jeff,

I look forward to hearing from your client about the consolidation. I also note that your client's discovery responses to our first set of discovery requests were due on Monday, August 3rd, but I don't seem to have received anything. Please let us know if you have sent WhysUp's discovery responses to us yet, and the date that you sent them. We would also appreciate receiving an electronic copy of the discovery responses as soon as possible.

Regards,
Karen

From: jeff.neu@kuzasneu.com [<mailto:jeff.neu@kuzasneu.com>]
Sent: Friday, August 07, 2015 12:30 PM
To: Karen Webb
Cc: Emily Gische; Anthony Olivas; tm
Subject: RE: WhysUp - WhatsApp Opposition

Hi Karen,

I still haven't heard back from my client. I will contact you once I do.

Cheers,
Jeff

From: Karen Webb [<mailto:KWebb@fenwick.com>]
Sent: Friday, July 31, 2015 2:04 AM
To: 'Jeffrey Neu'
Cc: Emily Gische; Anthony Olivas; tm
Subject: RE: WhysUp - WhatsApp Opposition

Jeff,

If you haven't heard back from your client with consent to consolidate, we'll go ahead and file the extension based on the grounds that the parties are unable to complete discovery/testimony during the assigned period. We'll get the extension filed and forward a copy of the receipt. Please let us know once you hear from your client.

Regards,
Karen

From: Karen Webb
Sent: Tuesday, July 28, 2015 1:47 PM
To: 'Jeffrey Neu'
Cc: Emily Gische; Anthony Olivas; tm
Subject: RE: WhysUp - WhatsApp Opposition

Jeff,

Have you heard back from your client on the consolidation? We are ready to file the extensions noting the grounds for the request is that we are going to file a stipulated motion to consolidate, but I don't want to file with those grounds until we have your consent.

We look forward to hearing from you.

Regards,
Karen

From: Jeffrey Neu [<mailto:jeff.neu@kuzasneu.com>]
Sent: Monday, July 27, 2015 9:38 AM
To: Karen Webb
Cc: Emily Gische; Anthony Olivas; tm
Subject: RE: WhysUp - WhatsApp Opposition

I have to confer with my client about the consolidation of oppositions, but I would presume that it would not be a problem.

Cheers,
Jeff

732-978-4053
jeff.neu@kuzasneu.com

From: Karen Webb [<mailto:KWebb@fenwick.com>]
Sent: Monday, July 27, 2015 12:35 PM
To: 'Jeffrey Neu' <jeff.neu@kuzasneu.com>
Cc: Emily Gische <egische@fenwick.com>; Anthony Olivas <aolivas@fenwick.com>; tm <tm@fenwick.com>
Subject: RE: WhysUp - WhatsApp Opposition

Jeff,

Thanks for your email. Just to clarify, are you also consenting to consolidate the oppositions?

Regards,

Karen

From: Jeffrey Neu [<mailto:jeff.neu@kuzasneu.com>]
Sent: Monday, July 27, 2015 7:34 AM
To: Karen Webb
Cc: Emily Gische; Anthony Olivas; tm
Subject: RE: WhysUp - WhatsApp Opposition

I'm happy to consent to the extension.

Cheers,
Jeff

732-978-4053
jeff.neu@kuzasneu.com

From: Karen Webb [<mailto:KWebb@fenwick.com>]
Sent: Friday, July 24, 2015 5:34 PM
To: Jeffrey Neu <jeff.neu@kuzasneu.com>
Cc: Emily Gische <egische@fenwick.com>; Anthony Olivas <aolivas@fenwick.com>; tm <tm@fenwick.com>
Subject: RE: WhysUp - WhatsApp Opposition

Dear Jeff,

Following up on the WHYSUP and WHYSUP Logo oppositions – in an effort to save both parties time and effort, I propose filing the attached stipulated motion to consolidate the oppositions. If you agree, we recommend first filing a 30-day extension of the current trial schedule and deadlines to give the Board time to grant the motion. Please let us know if you consent to the extension and consolidation and we'll get the request and motion filed.

Regards,
Karen

FW Ref: [G_20662] [G_20661]

From: Karen Webb
Sent: Friday, July 03, 2015 11:21 AM
To: Jeffrey Neu
Cc: Emily Gische; Zia Mirza
Subject: RE: WhysUp - WhatsApp Opposition

Dear Jeff,

Further to the below, I received a bounce back from Victoria's email, so I am resending just in case.

Regards,
Karen

From: Karen Webb
Sent: Friday, July 03, 2015 11:13 AM
To: 'victoria.mercer@kuzasneu.com'
Cc: Emily Gische; Zia Mirza; Jeffrey Neu
Subject: RE: WhysUp - WhatsApp Opposition

Dear Victoria,

Attached are WhatsApp's first sets of discovery requests for the WHYSUP and WHYSUP Logo oppositions.

Regards,
Karen



KAREN WEBB
[Fenwick & West LLP](#)
Partner, IP Group
<image002.gif> (650) 335-7656
<image003.gif> (650) 938-5200
 kwebb@fenwick.com

From: Karen Webb
Sent: Friday, March 13, 2015 5:32 PM
To: 'victoria.mercer@kuzasneu.com'
Cc: Emily Gische; Zia Mirza; Jeffrey Neu
Subject: RE: WhysUp - WhatsApp Opposition - Initial Disclosures

Dear Victoria,

Attached are the Initial Disclosures from WhatsApp.

Regards,
Karen



KAREN WEBB
[Fenwick & West LLP](#)
Partner, IP Group
<image002.gif> (650) 335-7656
<image003.gif> (650) 938-5200
 kwebb@fenwick.com

From: victoria.mercer@kuzasneu.com [<mailto:victoria.mercer@kuzasneu.com>]
Sent: Friday, March 13, 2015 4:57 PM
To: Trademark
Cc: Karen Webb; Emily Gische; Zia Mirza; Jeffrey Neu
Subject: WhysUp - WhatsApp Opposition - Initial Disclosures

Dear Karen,

Attached please find the Initial Disclosures from WhysUp.

Thank you,
Victoria

Victoria A. Mercer
Attorney At Law
Kuzas Neu, P.C.
p. 732.784.1791
f. 866.642.6260
e. victoria.mercer@kuzasneu.com

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Exhibit E

From: [Jeffrey Neu](#)
To: [Karen Webb](#)
Cc: [Emily Gische](#); [Anthony Olivas](#); [tm](#)
Subject: RE: WhysUp - WhatsApp Opposition
Date: Thursday, August 20, 2015 8:40:51 AM

Hi Karen,

I have not been able to reach my client. I will update you when I hear back.

Cheers,
Jeff

732-978-4053
jeff.neu@kuzasneu.com

From: Karen Webb [<mailto:KWebb@fenwick.com>]
Sent: Friday, August 14, 2015 5:36 PM
To: 'jeff.neu@kuzasneu.com' <jeff.neu@kuzasneu.com>
Cc: Emily Gische <egische@fenwick.com>; Anthony Olivas <aolivas@fenwick.com>; tm@fenwick.com
Subject: RE: WhysUp - WhatsApp Opposition

Hi Jeff,

I have not received a response to my email below or any discovery responses from Whysup. At this point, Whysup has waived any substantive objections to the discovery requests. See TBMP 403.03. Please let me know when you are available for a meet and confer regarding Whysup's failure to respond to the discovery requests.

Please also confirm that your client consents to our consolidation request. I look forward to hearing from you.

Regards,
Karen

From: Karen Webb
Sent: Friday, August 07, 2015 2:42 PM
To: 'jeff.neu@kuzasneu.com'
Cc: Emily Gische; Anthony Olivas; tm
Subject: RE: WhysUp - WhatsApp Opposition

Hi Jeff,

I look forward to hearing from your client about the consolidation. I also note that your client's discovery responses to our first set of discovery requests were due on Monday, August 3rd, but I don't seem to have received anything. Please let us know if you have sent WhysUp's discovery

responses to us yet, and the date that you sent them. We would also appreciate receiving an electronic copy of the discovery responses as soon as possible.

Regards,
Karen

From: jeff.neu@kuzasneu.com [<mailto:jeff.neu@kuzasneu.com>]
Sent: Friday, August 07, 2015 12:30 PM
To: Karen Webb
Cc: Emily Gische; Anthony Olivas; tm
Subject: RE: WhysUp - WhatsApp Opposition

Hi Karen,

I still haven't heard back from my client. I will contact you once I do.

Cheers,
Jeff

From: Karen Webb [<mailto:KWebb@fenwick.com>]
Sent: Friday, July 31, 2015 2:04 AM
To: 'Jeffrey Neu'
Cc: Emily Gische; Anthony Olivas; tm
Subject: RE: WhysUp - WhatsApp Opposition

Jeff,

If you haven't heard back from your client with consent to consolidate, we'll go ahead and file the extension based on the grounds that the parties are unable to complete discovery/testimony during the assigned period. We'll get the extension filed and forward a copy of the receipt. Please let us know once you hear from you client.

Regards,
Karen

From: Karen Webb
Sent: Tuesday, July 28, 2015 1:47 PM
To: 'Jeffrey Neu'
Cc: Emily Gische; Anthony Olivas; tm
Subject: RE: WhysUp - WhatsApp Opposition

Jeff,

Have you heard back from your client on the consolidation? We are ready to file the extensions noting the grounds for the request is that we are going to file a stipulated motion to consolidate, but I don't want to file with those grounds until we have your consent.

We look forward to hearing from you.

Regards,
Karen

From: Jeffrey Neu [<mailto:jeff.neu@kuzasneu.com>]
Sent: Monday, July 27, 2015 9:38 AM
To: Karen Webb
Cc: Emily Gische; Anthony Olivas; tm
Subject: RE: WhysUp - WhatsApp Opposition

I have to confer with my client about the consolidation of oppositions, but I would presume that it would not be a problem.

Cheers,
Jeff

732-978-4053
jeff.neu@kuzasneu.com

From: Karen Webb [<mailto:KWebb@fenwick.com>]
Sent: Monday, July 27, 2015 12:35 PM
To: 'Jeffrey Neu' <jeff.neu@kuzasneu.com>
Cc: Emily Gische <egische@fenwick.com>; Anthony Olivas <aolivas@fenwick.com>; tm <tm@fenwick.com>
Subject: RE: WhysUp - WhatsApp Opposition

Jeff,

Thanks for your email. Just to clarify, are you also consenting to consolidate the oppositions?

Regards,
Karen

From: Jeffrey Neu [<mailto:jeff.neu@kuzasneu.com>]
Sent: Monday, July 27, 2015 7:34 AM
To: Karen Webb
Cc: Emily Gische; Anthony Olivas; tm
Subject: RE: WhysUp - WhatsApp Opposition

I'm happy to consent to the extension.

Cheers,
Jeff

732-978-4053

jeff.neu@kuzasneu.com

From: Karen Webb [<mailto:KWebb@fenwick.com>]
Sent: Friday, July 24, 2015 5:34 PM
To: Jeffrey Neu <jeff.neu@kuzasneu.com>
Cc: Emily Gische <egische@fenwick.com>; Anthony Olivas <aolivas@fenwick.com>; tm <tm@fenwick.com>
Subject: RE: WhysUp - WhatsApp Opposition

Dear Jeff,

Following up on the WHYSUP and WHYSUP Logo oppositions – in an effort to save both parties time and effort, I propose filing the attached stipulated motion to consolidate the oppositions. If you agree, we recommend first filing a 30-day extension of the current trial schedule and deadlines to give the Board time to grant the motion. Please let us know if you consent to the extension and consolidation and we'll get the request and motion filed.

Regards,
Karen

FW Ref: [G_20662] [G_20661]

From: Karen Webb
Sent: Friday, July 03, 2015 11:21 AM
To: Jeffrey Neu
Cc: Emily Gische; Zia Mirza
Subject: RE: WhysUp - WhatsApp Opposition

Dear Jeff,

Further to the below, I received a bounce back from Victoria's email, so I am resending just in case.

Regards,
Karen

From: Karen Webb
Sent: Friday, July 03, 2015 11:13 AM
To: 'victoria.mercer@kuzasneu.com'
Cc: Emily Gische; Zia Mirza; Jeffrey Neu
Subject: RE: WhysUp - WhatsApp Opposition

Dear Victoria,

Attached are WhatsApp's first sets of discovery requests for the WHYSUP and WHYSUP Logo oppositions.

Regards,

Karen



KAREN WEBB

Fenwick & West LLP

Partner, IP Group

☎ (650) 335-7656

📠 (650) 938-5200

✉ kwebb@fenwick.com

From: Karen Webb
Sent: Friday, March 13, 2015 5:32 PM
To: 'victoria.mercer@kuzasneu.com'
Cc: Emily Gische; Zia Mirza; Jeffrey Neu
Subject: RE: WhysUp - WhatsApp Opposition - Initial Disclosures

Dear Victoria,

Attached are the Initial Disclosures from WhatsApp.

Regards,
Karen



KAREN WEBB

Fenwick & West LLP

Partner, IP Group

☎ (650) 335-7656

📠 (650) 938-5200

✉ kwebb@fenwick.com

From: victoria.mercer@kuzasneu.com [<mailto:victoria.mercer@kuzasneu.com>]
Sent: Friday, March 13, 2015 4:57 PM
To: Trademark
Cc: Karen Webb; Emily Gische; Zia Mirza; Jeffrey Neu
Subject: WhysUp - WhatsApp Opposition - Initial Disclosures

Dear Karen,

Attached please find the Initial Disclosures from WhysUp.

Thank you,
Victoria

Victoria A. Mercer
Attorney At Law
Kuzas Neu, P.C.
p. 732.784.1791
f. 866.642.6260
e. victoria.mercer@kuzasneu.com

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