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

Proceeding	91220956
Party	Plaintiff Unique Photo Inc.
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Submission	Motion to Compel Discovery
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Signature	/Daniel P. Laine/
Date	01/28/2016
Attachments	Opposer's Motion to Compel Discovery 01-28-16.pdf(883361 bytes ) Declaration of Daniel Laine.pdf(208586 bytes ) EXHIBIT A.pdf(791796 bytes ) EXHIBIT B.pdf(1576978 bytes ) EXHIBIT C.pdf(733624 bytes ) EXHIBIT D.pdf(155547 bytes ) EXHIBIT E.pdf(148083 bytes ) EXHIBIT F.pdf(264554 bytes ) EXHIBIT G.pdf(154242 bytes ) EXHIBIT H.pdf(256184 bytes ) EXHIBIT I.pdf(99683 bytes ) EXHIBIT J.pdf(506049 bytes ) EXHIBIT K.pdf(492276 bytes )

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

UNIQUE PHOTO, INC.,	:	
	:	
	:	Mark: UUNIQUE
Opposer,	:	
	:	Serial Number: 79/153,014
v.	:	
	:	
SANJAY AGARWAL,	:	Opposition No. 91220956
	:	
Applicant.	:	
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**OPPOSER’S MOTION TO COMPEL DISCOVERY  
PURSUANT TO 37 C.F.R. § 2.120(e) AND BRIEF IN SUPPORT OF MOTION**

**I. INTRODUCTION**

Opposer Unique Photo, Inc. (“Opposer”) respectfully moves the Board to compel applicant Sanjay Agarwal (“Applicant”) to fully respond to Opposer’s Interrogatory Nos. 5, 7, 10, 11, 14, 15, 17-20, and 26 and Requests for Production of Documents and Things Nos. 1, 6, 7, 20, 22, and 29, pursuant to 37 C.F.R. § 2.120(e) and TBMP § 523.

Applicant’s responses failed to meet the most fundamental obligations required of recipients of discovery requests. *See* TBMP §§ 401.05, 408.01, 408.03. After being put on notice by Opposer of his failure to abide by his discovery obligations, Applicant continued to evade his obligations making feeble and incoherent responses, to the extent any response was provided at all. Indeed, Applicant has not recanted the qualification to all his discovery responses: “I reserve my right to change my opinion regarding any answer at any time, including about past facts, stated opinions about any past or future facts, circumstances or persons. No liability will be accepted based on any of the answers.” (Declaration of Daniel P. Laine (“Laine Decl.”) Exh. B.) Nor has Applicant been receptive to Opposer’s offer to agree to delay the

remaining dates on the trial schedule so that Applicant's deficiencies can be remedied. (Laine Decl. Exhs. E, J.)

The interrogatory and document requests served by Opposer go to the crux of the issues in this opposition, namely, each seeks to establish that use of Applicant's goods listed in his application would likely cause confusion with the marks owned by Opposer. Thus, responses to the interrogatories and document requests are essential for Opposer to prepare its arguments for trial.

Due to Applicant's disregard of the discovery process and the difficulty encountered by Opposer in obtaining complete discovery answers necessary for trial, Opposer now faces an imminent deadline to file a motion to compel. It is under these circumstances that Opposer respectfully requests that Applicant be ordered to answer Interrogatory Nos. 5, 7, 10, 11, 14, 15, 17-20, and 26 and to produce requested documents and things for Requests for Production Nos. 1, 6, 7, 20, 22, and 29.

## **II. STATEMENT OF FACTS**

Opposer's interrogatories and requests for production of documents and things to Applicant were timely served on December 1, 2015. (Laine Decl. ¶ 2.) On December 29, 2015, Applicant responded (hereinafter "Original Answers"). (*Id.* ¶ 3.) Opposer described the many deficiencies and unfulfilled obligations regarding the Original Answers in a letter to Applicant on January 7, 2016 (hereinafter "January 7 letter"). (Laine Decl. ¶ 4 Exhs. C, D.) In the letter, Opposer also offered that it would be willing to agree to seek extra time from the Board if Applicant needed it to provide complete answers. (*Id.*) Applicant sent a response by e-mail on January 11th, 2016, stating that he was "not in any manner obliged to [resolve the pending factual questions] but that he would provide answers "in due course." (*Id.* ¶ 5 Exh. E.)

In subsequent correspondence on January 14, 2016, Opposer once again told Applicant that his discovery responses were deficient and offered to make an agreement with Applicant to request extra time for resolution of discovery issues. (Laine Decl. ¶ 6 Exhs. F, G.) On the same day in a separate letter, Opposer made an offer of settlement. (*Id.* ¶ 7 Exhs. H, I.) Without a response to either letter of January 14, and without a response to the offer to request extra time, Applicant provided yet another incomplete response to the deficiencies and unfulfilled obligations by letter to Opposer on January 25, 2016 (hereinafter “Supplemental Answers”). (*Id.* ¶ 8 Exh. J.)

### **III. ARGUMENT**

Under 37 C.F.R. § 2.120(e), “if a party . . . fails to answer any question propounded in . . . any interrogatory, or fails to produce and permit the inspection and copying of any document or thing, the party entitled to disclosure or seeking discovery may file a motion to compel disclosure.” 37 C.F.R. § 2.120(e).

As discussed in detail, *infra*, Applicant has acted with utter disregard to his discovery obligations. Opposer is entitled to discovery because proper responses would show a likelihood of confusion between Applicant’s marks and Opposer’s marks upon Applicant’s use of UUNIQUE in the United States. (Laine Decl. Exh. A.) For example, a complete answer to Request for Production No. 6 would identify channels of trade for Applicant’s goods by identifying Applicant’s contemplated or current distributors. Thus, because of Applicant’s failure to satisfy his discovery obligations and because Opposer is entitled to the discovery sought, Opposer respectfully requests that the Board issue an order compelling Applicant to supplement his prior responses to interrogatories and to fully respond to Opposer’s document requests pursuant to TBMP § 523 and 37 C.F.R. § 2.120(e).

### **1. Applicant's Disregard Of Discovery Process**

Applicant has flagrantly ignored the applicable rules and obligations in conducting discovery before the Board. *See, e.g.*, TBMP § 401.05; Fed. R. Civ. P. 26(g)(1). In his response to Opposer's discovery requests, Applicant stated that "I reserve my right to change my opinion regarding any answer at any time, including about past facts, stated opinions about any past or future facts, circumstances or persons. No liability will be accepted based on any of the answers." (Laine Decl. Exh. B.) Such a statement is manifestly improper, as Fed. R. Civ. P. 26(g)(1) requires that "[a] party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry [that a disclosure] is complete and correct." Opposer communicated this impropriety in its January 7 letter. (*Id.* Exh. C.)

In Applicant's letter of January 25, 2016, purporting to address his obligations with respect to Opposer's discovery requests, Applicant was unfazed and refused to retract his qualification. Applicant stated that "in cases where you are requesting me to provide opinion or any other form of interpretation of certain facts, you should be aware that such interpretations do not have binding effect upon me. They are not subject to the Federal Rules of Evidence." (*Id.* Exh. J.)

Applicant was also dismissive regarding his obligation to remedy deficiencies, and to do so in a timely manner. *See, e.g.*, TBMP § 408.03; Fed. R. Civ. P. 26(e)(1). In an e-mail that acknowledged receipt of Opposer's notice of deficient responses, Applicant stated that Opposer is "not in a position to impose deadlines" and that "I am going to answer your last enquiry in due course." (Laine Decl. Exh. E.) This is improper, as Fed. R. Civ. P. 26(e)(1) states that: "[a] party . . . who has responded to an interrogatory, request for production, or request for admission-must supplement or correct its disclosure or response . . . *in a timely manner* if the

party learns that in some material respect the...response is incomplete or incorrect.”  
(Emphasis added.)

**2. Applicant Never Objected To Opposer’s Interrogatories And Requests For Production**

Applicant failed to object to Opposer’s discovery in his Original Answers, as required under the rules. (Laine Decl. Exh. A; Fed. R. Civ. P. 33(b)(2), (b)(4), 34(b)(2).) Several weeks later, Applicant decided to object in his Supplemental Answers. (Laine Decl. Exh. J.) For example, in his answer to deficiencies with respect to Interrogatory No. 10, Applicant stated that: “I also object against this interrogatory due to its vagueness as I am not in a position to establish resolute decision to any such question.” (*Id.*) Applicant failed to object in a timely manner and therefore his attempt to object amounts to avoidance of his discovery obligations. Further, even if Applicant did submit a proper objection, which he did not, the objection itself is improper. Applicant cannot object on the grounds that he is “not in a position to establish resolute decision.” (*Id.*) Not being able to commit to an answer is not a proper ground for objection. Plainly, Applicant has not made a reasonable inquiry in an effort to respond to Opposer’s discovery as required by Fed. R. Civ. P. 26(g)(1).

**3. Faulty Verification**

Applicant failed to act in conformance with the rules when he submitted a qualified verification statement. Fed. R. Civ. P. 33(b)(3) requires that all interrogatories be answered under oath. In Applicants Original Answers, no verification statement or any statement under oath was provided. (Laine Decl. Exh. B.) This is in clear contravention of the rules. Opposer put Applicant on notice that he had failed to meet this obligation in its January 7 letter. (*Id.* Exh. C.)

Later, Applicant provided what purported to be a verification statement with his Supplemental Answers. (Laine Decl. Exh. J.) But, upon closer examination, the purported verification statement was rendered meaningless by qualifications made in the remarks accompanying the answers. Applicant stated that “with regard to those replies that are related to past facts of the case, I am providing a verification at the end of this document.” (*Id.*) This is faulty as it is unclear what “past facts of the case” means. Applicant’s manner of response, and his equivocal statements with regard to verification, plainly evades the oath requirement and in so doing circumvents the discovery process.

#### **4. Specific Answers By Applicant**

Applicant has repeatedly ignored the requirement that he provide proper responses. He attempted to mask his evasion by filing supplemental responses that are no less deficient than his Original Answers. (Laine Decl. Exhs. B, J.) Representative Interrogatory deficiencies include:

- i. Interrogatory No. 14: Applicant was queried to “[i]dentify and describe each . . . survey . . . commenced or completed by Applicant . . . with respect to the UUNIQUE mark.” (*Id.* Exh. A.) Applicant’s Original Answer stated that he “made a survey” and included an unmarked table with what were purportedly the results of the survey. (*Id.* Exh. B.) The answer did not state the source of the survey, what method was used to conduct the survey nor when it was performed. Also, Applicant stated that the survey was for the “purposes of establishing the strength of similar marks,” which is inconsistent with the query which was directed to surveys “with respect to the UUNIQUE mark.” Opposer informed Applicant of his deficient response in its January 7 letter. (*Id.* Exh. C.) Applicant, in his Supplemental Answers, stated that “[t]he list that I provided has

been constantly renewed and its purpose was to discover any marks that have been registered after Unique Photo.” (*Id.* Exh. J.) Surely, however, there must be additional information to describe the survey beyond the list such as the parameters under which it was conducted. Applicant’s supplemental answers failed to respond to the deficiencies, and Applicant’s statement that the list “has been constantly renewed” suggests that more than one survey exists. Applicant has only identified one survey. For at least these reasons, Applicant has completely failed to honor his discovery obligations.

- ii. Interrogatory No. 17: Applicant was queried to “[i]dentify all . . . trade shows or conventions attended by Applicant” and to “state the activities of Applicant at such shows or conventions.” (*Id.* Exh. A.) “Identify” was defined in Opposer’s discovery requests as, *inter alia*, giving the identity of a person, corporation or other business entity. (*Id.*) Applicant, in his Original Answer, stated that “Unique was represented at CES [consumer electronics show] 2015 organized by Brightstar” but failed to state his activities at the show. (*Id.* Exh. B.) Activities Applicant presumably conducted directly or through his agent include giveaways of promotional materials, activities identified in trade show marketing materials, meetings with potential customers and negotiation of terms between Applicant and Brightstar or other possible distributors, agents, or customers. Applicant also neglected to identify any of the persons or business entities responsible for CES 2015. Opposer notified Applicant of the grave deficiencies in his response in its January 7 letter. (*Id.* Exh. C.) In his Supplemental Answers, Applicant stated that “I am providing all information that is available to me.” (*Id.* Exh. J.) Contrary to

Applicant's statements, however, there must have been activities that took place at CES 2015. One cannot be "represented at CES" and not conduct activities. Both Applicant's Original Answers and Supplemental Answers are wholly inadequate. Here, Applicant has decided there is no need to be evasive as he blatantly ignored the query.

- iii. Interrogatory No. 20: Applicant was queried to "state all known facts in support of Applicant's contentions in paragraphs 11 through 34 of the Answer to Notice of Opposition." (Laine Decl. Exh. A.) Applicant, in his Original Answer, stated that "[a]ll statements . . . are supported by all facts that I have been acquainted with at the time the document was executed," without including any supporting facts. (*Id.* Exh. B.) It is abundantly clear that Applicant has made many contentions that require factual support. For example, Applicant's assertion that "applicant's goods neither move in similar trade channels, nor are they legally identical . . . to registrants goods" must be supported by facts to show why the goods do not move in similar trade channels. (*Id.* ¶ 9 Exhs. C, K.) Similarly, Applicant's assertion that his mark "has no similar elements in its global appreciation with the other marks enlisted in the opposition" and "[i]ts graphical and semantic perception is generally different than those of the other marks" also requires factual support. (*Id.* Exh. K.) Applicant did not provide facts to show why the marks have no similar elements. However, rather than tackle his failure to respond to this Interrogatory, Applicant's Supplemental Answer circumvented the failed initial response by stating that "I have nothing more to add on the other interrogatories you are citing." (*Id.* Exh. J.) Contrary to Applicant's statements,

however, the contentions as presented by Applicant must be supported by facts, none of which were included in Applicant's responses. To the extent Applicant referred to Interrogatory No. 20 in his Supplemental Answers, "I have nothing more to add" dodges the problem: The woeful insufficiency of Applicant's Original Answers.

Representative Requests for Production deficiencies include:

- iv. Requests for Production No. 1: Applicant was requested to provide "[a]ll documents identified, or the identification of which is requested, in Interrogatories Nos. 1-27 to Applicant." (*Id.* Exh. A.) Applicant's Original Answer stated that "[w]e [sic] have not identified any documents." (*Id.* Exh. B.) Applicant ignored not only his duty to make a reasonable inquiry per Fed. R. Civ. P. 26(g)(1), he also ignored the existence of documents blatantly identified in the interrogatories and evident through his Original Answers. For example, in his Original Answers, Applicant stated that "UUnique was represented at CES 2015." Applicant did not provide any advertising materials for the event, receipts, or any other documentation such as communication between Applicant and Brightstar or any other parties involved. Also in his Original Answers, Applicant stated that he "made a survey . . . for the purposes of establishing the strength of similar marks." Applicant has failed to provide a copy of the survey as run on software he used, a copy of the report produced by the software, any receipts related to the services he used, documents to show when the survey was conducted or documents describing key words or other methods used in the strategy for the search. Opposer's January 7 letter pointed to many examples of Applicant's deficient

response. (*Id.* Exh. C.) Nonetheless, in a brazen Supplemental Answer, Applicant stated that “no documents are to be sent,” notwithstanding that documents were evident through his Original Answers such as those above and identified in the interrogatories. (*Id.* Exh. J.) Applicant’s continued denial as to the existence of documents is misplaced, as documents must exist that relate to the interrogatory requests. Clearly, Applicant has no intent in meeting his discovery obligations and responding to Opposer’s document demands. This could not be more evident than in Applicant’s own words. In his Supplemental Answers, he stated: “should you wish to challenge this position, you should pursue other procedural steps.”

- v. Requests for Production No. 6: Applicant was requested to provide documents to identify “all present, proposed or contemplated distributors and/or licensees offering goods or services . . . by reference to Applicant’s UUNIQUE mark.” (*Id.* Exh. A.) Applicant’s Original Answer stated that he has “never used UUNIQUE . . . in relation to any sales in the United States . . . and [he has] no specific plans related to . . . [his] prospective business in the United States.” (*Id.* Exh. B.) However, Applicant has stated that “UUnique was represented at CES 2015 organized by Brightstar.” (*Id.*) Thus, contrary to Applicant’s statements, there must be documents based on the relationship between Applicant and Brightstar for CES 2015. Applicant has clearly evaded the request and failed to satisfy his obligations. Applicant must have receipts, letters, contracts, e-mails or other documents related to the representation of UUNIQUE at CES 2015 and with respect to the parties Applicant was in contact with for its representation at CES

2015. Opposer notified Applicant of his deficiencies in its January 7 letter. (Laine Decl. Exh. C.) Nonetheless, Applicant ignored the notice and proceeded to provide another deficient response in his Supplemental Answer, only stating that “no documents are to be sent.” (*Id.* Exh. J.) Applicant’s actions suggest he is not interested in cooperating to fulfill his discovery obligations.

#### **5. Silence As To Extension Of Time**

Because Applicant has continually hindered the discovery process, as described, *supra*, Opposer has made repeated offers to Applicant to agree to an extension of time to resolve the discovery issues. However, in accord with Applicant’s behavior regarding his discovery obligations, Applicant has spurned and otherwise completely ignored Opposer’s offers.

Opposer first offered to agree to an extension of time in its January 7th letter addressing Applicant’s Original Answers. (Laine Decl. Exh. C.) Opposer stated that if Applicant could not obtain answers by January 13, 2016, Opposer would be amenable to an agreement to request a delay to the dates on the trial schedule to allow Applicant the time necessary to provide answers. (*Id.*) However, Applicant ignored the offer and instead chose to declare that Opposer is “not in a position to impose deadlines.” (*Id.* Exh. E.)

On January 14, in a second attempt to broach the topic of the trial schedule and amicably facilitate the procurement of complete discovery responses, Opposer sent Applicant an e-mail with an offer to agree to an extension of time, particularly because Applicant had failed to fulfill its discovery obligations. (*Id.* Exh. F.) To simplify the process, Opposer attached a joint stipulation with the e-mail for signature by the Applicant. (*Id.*) To the extent Applicant sent correspondence after January 14th, he failed to even acknowledge that Opposer had offered to agree to seek an extension of time. (*Id.* Exh. J.) Simply put, Applicant has continually evaded

Opposer's requests in what amounts to a greatly reduced chance for successful completion of discovery.

#### **IV. SUBMISSION REQUIREMENTS**

As required under 37 C.F.R. § 2.120(e), a copy of the interrogatories and requests for production and a copy of Applicant's answers are included in Exhibits A, B, and J of the Laine declaration, respectively. A list and brief description of documents that were not produced for inspection is included in Exhibit C of same.

Further, as described above and in the Laine declaration at paragraph 10, Opposer has made a good-faith effort to resolve the issues presented in the motion pursuant to TBMP § 408.01(c) prior to seeking relief from the Board. (Laine Decl. ¶ 10.) Applicant has failed to provide complete responses to Opposer's discovery requests. (*Id.* Exhs. A, C.) Applicant has also failed to acknowledge Opposer's efforts to have the parties agree to seek an extension of the trial period for the purposes of fulfilling discovery obligations. (*Id.* Exhs. C, F.)

In another approach to obtain a resolution to the dispute, Opposer sent a letter that included new terms for settlement. (*Id.* Exh. H.) In this letter, Opposer indicated that it would forego any challenge to the UU mark owned by Applicant (Reg. No. 4,766,488) if Applicant would agree to abandon his UUNIQUE application. Applicant has failed to acknowledge or respond to this settlement offer. (*Id.*)

#### **V. CONCLUSION**

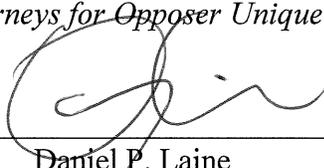
Nothing can be clearer than Applicant's own words to describe the predicament of Opposer, as Applicant has stated that "I reserve my right to change my opinion regarding any answer at any time . . . . No liability will be accepted based on any of the answers." (Laine Decl. Exh. C.) With regard to Applicant's failure to provide proper answers, Applicant stated

that “should you wish to challenge this position, you should pursue other procedural steps.” (Laine Decl. Exh. J.) For the reasons stated herein, Opposer respectfully requests that the Board grant its Motion to Compel and order Applicant to provide additional information for its deficient Interrogatory responses Nos. 5, 7, 10, 11, 14, 15, 17-20, and 26 and to produce all documents responsive to Opposer’s Requests for Production of Documents and Things Nos. 1, 6, 7, 20, 22, and 29. Opposer also respectfully requests that the Board compel Applicant to provide all of its responses to Opposer’s requests without improper qualification and to further provide a verification statement without qualification.

Accordingly, Opposer requests that this opposition be suspended and that the Board issue an Order compelling Applicant to supplement its prior responses to interrogatories and to fully respond to Opposer’s document requests pursuant to TBMP § 523 and 37 C.F.R. § 2.120(e).

LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
*Attorneys for Opposer Unique Photo, Inc.*

Dated: January 28, 2016

By:  \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the within OPPOSER'S MOTION TO COMPEL DISCOVERY PURSUANT TO 37 CFR § 2.120(e) AND BRIEF IN SUPPORT OF MOTION was served upon the following applicant of record this 28th day of January, 2016, by overnight courier and addressed as follows:

**VIA FEDERAL EXPRESS** (+44.0.208.434.3501)

**AND VIA E-MAIL**

Attn: Sanjay Agarwal  
Aegis Vision Limited  
Boundary House, Boston Road  
London, UK W7 2QE  
E-mail: sanjay@aegis.uk.com



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Daniel P. Laine

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

UNIQUE PHOTO, INC.,	:	
	:	
	:	Mark: UUNIQUE
Opposer,	:	
	:	Serial Number: 79/153,014
v.	:	
	:	
SANJAY AGARWAL,	:	Opposition No. 91220956
	:	
Applicant.	:	
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	:	x

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**DECLARATION OF DANIEL P. LAINE IN SUPPORT  
OF OPPOSER'S MOTION TO COMPEL DISCOVERY**

I, DANIEL P. LAINE, hereby declare and state as follows:

1. I am an associate at the law firm of Lerner, David, Littenberg, Krumholz & Mentlik, LLP, counsel for Opposer Unique Photo, Inc., in the above-identified opposition proceeding. I am of legal age, competent to testify, and have personal knowledge of the facts set forth herein. I make this declaration to identify and provide exhibits referenced in Opposer's motion to compel discovery and to declare that I have made a good-faith effort to resolve the issues presented in the motion.

2. On December 1, 2015, Opposer served Opposer's Interrogatories Nos. 1-27, Requests for Production of Documents and Things Nos. 1-30 and Requests for Admission 1-10 to Applicant. Attached hereto as Exhibit A is a true and correct copy of Opposer's Interrogatories Nos. 1-27, Requests for Production of Documents and Things Nos. 1-30 and Requests for Admission 1-10 to Applicant.

3. On December 29, 2015, Applicant responded to such interrogatories, requests for production, and requests for admission. Attached hereto as Exhibit B is a true and correct copy

of Applicant's Answer to Opposer's Interrogatories Nos. 1-27, Requests for Production of Documents and Things Nos. 1-30 and Requests for Admission 1-10 to Applicant.

4. In a letter dated and sent to Applicant on January 7, 2016, via e-mail as an attachment, Opposer detailed deficiencies it perceived with respect to Applicant's responses to Opposer's discovery requests. Attached hereto as Exhibit C is a true and correct copy of the letter and the e-mail that included the letter as an attachment. Attached hereto as Exhibit D is a true and correct copy of the delivery receipt for the e-mail.

5. In an e-mail dated and sent on January 11, 2016, Applicant responded to Opposer's letter of January 7, 2016. Attached hereto as Exhibit E is a true and correct copy of the e-mail sent from Applicant on January 11, 2016.

6. In an e-mail dated and sent to Applicant on January 14, 2016, Opposer made an offer to Applicant to agree to a request for an extension of time from the Board for the remainder of the proceedings. An unsigned joint-stipulation to this effect was attached to the e-mail for Applicant's signature. Attached hereto as Exhibit F is a true and correct copy of the e-mail and joint-stipulation attached to the e-mail. Attached hereto as Exhibit G is a true and correct copy of the delivery receipt for the e-mail.

7. In a letter dated and sent to Applicant on January 14, 2016, via e-mail as an attachment, Opposer offered new terms of settlement to Applicant. Attached hereto as Exhibit H is a true and correct copy of the letter and the e-mail that included the letter as an attachment. Attached hereto as Exhibit I is a true and correct copy of the delivery receipt for the e-mail.

8. In a letter dated and sent on January 25, 2016, via e-mail as an attachment, Applicant responded a second time to Opposer's letter of January 7, 2016. Attached hereto as

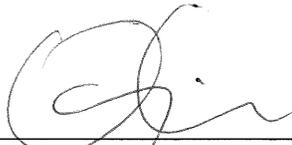
Exhibit J is a true and correct copy of the letter and the e-mail that included the letter as an attachment.

9. On April 30, 2015, Applicant served his Answer to Notice of Opposition. Attached hereto as Exhibit K is a true and correct copy of the Answer to Notice of Opposition.

10. I, Daniel P. Laine, have made a good-faith effort by correspondence to resolve with the other party the issues presented in the motion, and have been unable to reach agreement.

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

Executed on: JANUARY 28, 2016

  
\_\_\_\_\_  
Daniel P. Laine

# **EXHIBIT A**



**DEFINITIONS AND INSTRUCTIONS**

A. These Interrogatories, Requests for Production of Documents and Requests for Admission seek answers as of the date answered, but are also continuing so that any additional information relating to answers to these Interrogatories, Requests for Production of Documents and Requests for Admission which the Applicant acquires or which becomes known to Applicant, up to and including the time for hearing, shall be furnished to Opposer promptly after such information is acquired or becomes known, pursuant at least Fed. R. Civ. P. 26(e)(1) and (2).

B. As used herein, the term "document" is used in its customary broad sense and includes, without limitation, all printed, recorded, filed, reproduced, electronic, or written material or physical thing whatsoever.

C. As used herein, "person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

D. As used herein, to "identify," or give the "identity" of, with respect to persons, means to give, to the extent known, the person's full name, present or last known address, and present or last known place of employment. Once a person has been identified in accordance with this paragraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

E. As used herein, to "identify," or give the "identity" of, with respect to documents, means to give, to the extent known, the type of document, the general subject matter,

the date of the document, and the author(s) and recipient(s) of the document.

F. As used herein, "Opposer's marks" or "Opposer's UNIQUE marks" means the marks for which Opposer has common law protection and/or federal registrations, Opposer's federal registrations including, for example, I'M UNIQUE (Reg. No. 1,987,293), UNIQUE (Reg. No. 2,335,605), UNIQUE DIRECT (Reg. No. 3,048,697), UNIQUE PHOTO (Reg. No. 2,033,558), UNIQUE PHOTO (Reg. No. 3,704,895), UNIQUE PHOTO AND DESIGN (Reg. No. 1,988,699), UNIQUE TOTS (Reg. No. 2,920,948) and UNIQUE TOTS AND DESIGN (Reg. No. 2,994,632).

G. As used herein, "UUNIQUE mark" means any trademark, service mark, or other designation consisting of or including the term UUNIQUE in any manner whatsoever.

H. As used herein, "Applicant" means Sanjay Agarwal, or any person acting on his behalf.

I. As used herein "Applicant's business(es)" means any company or other entity Sanjay Agarwal is affiliated with. Affiliation can be in the form of an ownership interest, employment, membership on a board or any other capacity Sanjay Agarwal possesses as a representative of a company or other entity. Affiliation further extends to any parents, subsidiaries, predecessors or successors of a company with whom Sanjay Agarwal has an affiliation. In addition, any entity acting on behalf of Applicant's business(es) shall be considered "Applicant's business(es)" herein.

J. As used herein "Advertising" means any form of advertising including, for example, print, broadcast and online advertising.

K. As used herein "Outlet" or "Outlets" means not only retail sales locations, but also online websites with the option to purchase goods and services.

L. As used herein, "and" and "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these requests all documents and information that might otherwise be construed to be outside their scope.

M. As used herein, the singular shall always include the plural and the present tense shall always include the past tense, and vice versa, as necessary to bring within the scope of these requests all documents and information that might otherwise be construed to be outside their scope.

N. With respect to any document, the content of which or the production of which Applicant will withhold under claim of privilege, the following information should be provided in lieu of the requested information:

- (1) The date, identity, and general subject matter of each document;
- (2) The grounds for the refusal to produce the document;
- (3) The identity of each person who participated in the preparation of the document;
- (4) The identity of each person to whom the contents of the document were communicated;
- (5) A description of any other document or material transmitted with or attached to the document;
- (6) The number of pages in the document; and

(7) Whether any business or non-legal matter was contained or discussed in the document.

O. Whenever Applicant answers any interrogatory or document request by reference to records from which the answers may be derived or ascertained, as permitted under Rule 33(d) of the Federal Rules of Civil Procedure:

- (1) The identification of documents to be produced shall be in sufficient detail, such as by production number, to permit Opposer to locate and identify the records and to ascertain the answer as readily as Applicant;
- (2) Applicant shall make available any computerized information or summaries thereof that Applicant either has, or can adduce by a relatively simple procedure; and
- (3) Applicant shall provide any relevant compilations, abstracts, or summaries in Applicant's custody or readily obtainable by Applicant.

P. To the extent that any information or documents is producible in electronic form in response to the within Request for Production of Documents and Things and/or the Interrogatories, Applicant requests that such information or documents be produced in an electronic format readily usable by Applicants, including without limitation, on a hard drive, CD(s), or other commercially available computer-readable medium.

**INTERROGATORIES**

**Interrogatory No. 1**

Describe in detail all goods on which Applicant has used, or intends to use, the UUNIQUE mark in the United States.

**Interrogatory No. 2**

Describe in detail all services for which Applicant has used, or intends to use, the UUNIQUE mark in the United States.

**Interrogatory No. 3**

For each good identified in the answer to Interrogatory No. 1, provide the date upon which the UUNIQUE mark was first used in commerce in the United States.

**Interrogatory No. 4**

For each service identified in the answer to Interrogatory No. 2, provide the date upon which the UUNIQUE mark was first used in commerce in the United States.

**Interrogatory No. 5**

For each good and service identified in the answers to Interrogatory Nos. 1 and 2, identify each and every trademark in addition to Applicant's UUNIQUE mark that Applicant has used or intends to use in the marketing of the goods or services in the United States which include any form of the word "unique."

**Interrogatory No. 6**

In addition to Aegis Vision Ltd. and [www.uunique.uk.com](http://www.uunique.uk.com), identified in the Answer to the Notice of Opposition on April 30, 2015, identify whether UUNIQUE is being used in another business or for any other good or service.

**Interrogatory No. 7**

Identify and describe all advertising and promotional activities conducted by Applicant or Applicant's business(es) with respect to Applicant's goods and services using the UUNIQUE mark in the United States, and provide all documents which refer or relate to such advertising and promotional activities.

**Interrogatory No. 8**

Identify all channels of trade by which goods are sold or distributed or are intended to be sold or distributed under Applicant's UUNIQUE mark outside the United States.

**Interrogatory No. 9**

Identify all channels of trade by which goods are sold or distributed or are intended to be sold or distributed under Applicant's UUNIQUE mark inside the United States.

**Interrogatory No. 10**

Identify the persons employed by Applicant or Applicant's business(es) who are most knowledgeable regarding the use or plans for use of the UUNIQUE mark by Applicant in the United States.

**Interrogatory No. 11**

Identify the persons employed by Applicant or Applicant's business(es) who are most knowledgeable regarding enforcement of trademark rights by Applicant in the United States.

**Interrogatory No. 12**

Describe in detail the facts and circumstances under which the Applicant or Applicant's business(es) first became aware of Opposer's mark(s), including the date when Applicant or Applicant's business(es) first became aware of such mark, the persons who first became aware, and all decisions or actions discussed or taken based on such information.

**Interrogatory No. 13**

Identify and describe in detail any opposition or cancellation proceeding, or trademark litigation, unfair competition action, or any other civil action in the United States relating in any manner to the UUNIQUE mark that Applicant or Applicant's business(es) has been involved in.

**Interrogatory No. 14**

Identify and describe each poll, survey, consumer study, or other market research project directed to the United States commenced or completed by Applicant or by Applicant's business(es) with respect to the UUNIQUE mark.

**Interrogatory No. 15**

For each poll, survey, consumer study, or other market research project identified in the answer to Interrogatory No. 14, identify each third party that has cooperated in any way with Applicant or Applicant's business(es), and describe the nature and details of such cooperation.

**Interrogatory No. 16**

Provide a copy of each trademark search commissioned by Applicant or Applicant's business(es) for any mark containing the word UUNIQUE or any similar word for purposes of determining whether the UUNIQUE mark can be used in the United States.

**Interrogatory No. 17**

Identify all United States based trade shows or conventions attended by Applicant or other persons associated with Applicant's business(es) during the last three years, and state the activities of Applicant at such shows or conventions (e.g., exhibiting, attending, and/or training).

**Interrogatory No. 18**

Describe fully the origin of the term UUNIQUE as used in Applicant's UUNIQUE mark and identify all documents that refer or relate to the origin.

**Interrogatory No. 19**

Identify what Applicant considers to be the correct phonetic pronunciation of the mark UUNIQUE, its phonetic usage by consumers, and its intended meaning in the context of the goods offered under the mark.

**Interrogatory No. 20**

State all known facts in support of Applicant's contentions in paragraphs 11 through 34 of the Answer to Notice of Opposition dated April 30, 2015.

**Interrogatory No. 21**

Identify all competitors of Applicant or Applicant's business(es) in the United States.

**Interrogatory No. 22**

To the extent Applicant or Applicant's business(es) have not entered the United States, identify when Applicant or Applicant's business(es) intend to do so.

**Interrogatory No. 23**

To the extent that Applicant or Applicant's business(es) intend to enter the United States at different times for different goods and/or services, identify each good and/or service and the intended date of entry.

**Interrogatory No. 24**

Identify any goods or services not identified in Interrogatory No. 23 for which Applicant or Applicant's business(es) intend to enter the United States but for which no date of entry has been contemplated.

**Interrogatory No. 25**

Identify each person whom Applicant expects to call as a witness during his testimony period and, for each such person, state the substance of the facts and opinions to which such witness is expected to testify, and identify all documents in which such witness intends to rely on for its testimony, or refers or relates to expected testimony.

**Interrogatory No. 26**

For each Interrogatory, identify each person who was consulted to obtain information to answer such Interrogatory, who contributed information from which the answer to such Interrogatory was derived, and who prepared the answer to the Interrogatory.

**Interrogatory No. 27**

For each Request for Admission that Applicant responds to and denies in whole or in part, state the basis for the denial, and specify and identify all facts and documents and other evidence to support the denial.

**REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

**Request No. 1**

All documents identified, or the identification of which is requested, in Interrogatories Nos. 1-27 to Applicant.

**Request No. 2**

All documents which form the file of submissions to and from the U.S. Patent and Trademark Office of Applicant's application(s) and registration(s) relating to any mark consisting in whole or in part of UUNIQUE, or which refer or relate to such application(s) and registration(s).

**Request No. 3**

Copies of any United States trademark or service mark searches undertaken by and/or on behalf of Applicant or Applicant's business(es) relating to any mark consisting in whole or in part of UUNIQUE or any similar marks for purposes of determining whether the UUNIQUE mark can be used in the United States.

**Request No. 4**

All documents evidencing or relating to any unsolicited publicity or recognition obtained or received by Applicant in the United States in relation to Applicant's services or Applicant's goods offered under or by reference to the UUNIQUE mark.

**Request No. 5**

Documents that set forth, establish, or substantiate the dates upon which Applicant or Applicant's business(es) commenced use in commerce of the UUNIQUE mark in connection with: (1) each of Applicant's goods that use the UUNIQUE mark and (2) each of Applicant's services that use the UUNIQUE mark, to the extent the Applicant or Applicant's business(es) have used the UUNIQUE mark in connection with goods and services in the United States.

**Request No. 6**

Such documents as will permit the identification of:

- (a) All outlets in the United States or accessible from the United States for sale or proposed sale of each good and service which has been offered by Applicant or Applicant's business(es) under or by reference to Applicant's UUNIQUE mark;
- (b) All present, proposed or contemplated distributors and/or licensees offering goods or services in the United States under or by reference to Applicant's UUNIQUE mark; and
- (c) Any other outlets where any good or service has been offered or will be offered in the United States by Applicant or Applicant's business(es), under or by reference to Applicant's UUNIQUE mark.

**Request No. 7**

Representative specimens or samples of all advertising of any form, commercial material, brochures, product description materials, and other literature which refer or relate to all goods sold or distributed or services offered, or intended to be offered, in the United States by Applicant or Applicant's business(es) in connection with any mark consisting in whole or in part of UUNIQUE, including but not limited to, newspapers, magazines, trade journals, catalogs, packaging, price lists, packaging, labels, signs, containers, boxes, bags, tags, wrappers, package inserts and other business materials which have been distributed by or on behalf of Applicant for each year from the date Applicant claims he first shipped orders for goods to the United States under the UUNIQUE mark or otherwise used the mark in the United States to the present date.

**Request No. 8**

All documents which refer or relate in any way to any instances of actual confusion between Applicant and any third party with respect to any mark consisting in whole or in part of UUNIQUE.

**Request No. 9**

All documents which refer or relate in any way to any instances of actual confusion between Applicant and Opposer with respect to any mark consisting in whole or in part of UUNIQUE.

**Request No. 10**

All documents which refer or relate in any way to third party commercial use of the word UUNIQUE.

**Request No. 11**

All documents relating to any efforts by Applicant or Applicant's business(es) to defend his rights in the UUNIQUE mark against claims asserted by third parties.

**Request No. 12**

All documents that Applicant was aware of prior to filing his application for registration of UUNIQUE which refer or relate to Opposer or to Opposer's UNIQUE marks.

**Request No. 13**

Documents sufficient to show Applicant's or Applicant's business(es) annual advertising expenses for goods and services marketed in connection with the UUNIQUE mark since its inception.

**Request No. 14**

Documents sufficient to show Applicant's or Applicant's business(es) total sales in the United States for goods and services under the UUNIQUE mark in each of the last three years.

**Request No. 15**

All documents which constitute, relate, or refer to any assignment, license, or other transfer of any rights to or from Applicant relating to any mark consisting in whole or in part of UUNIQUE.

**Request No. 16**

All documents that refer to or relate to Applicant's decision to apply to register Applicant's applications and registrations in the United States Patent and Trademark Office in connection with any mark consisting in whole or in part of UUNIQUE.

**Request No. 17**

All documents which refer or relate to all opposition or cancellation proceedings, trademark litigations, unfair competition actions, or any other civil action relating in any manner to any mark consisting in whole or in part of UUNIQUE in the United States.

**Request No. 18**

All documents which refer or relate to all charges of infringement in the United States by or to Applicant or Applicant's business(es) with respect to any mark consisting in whole or in part of UUNIQUE or any similar mark.

**Request No. 19**

Documents which refer or relate to any notice received by Applicant of potentially infringing uses of trade names, trademarks, or service marks by any other entity based on mark(s) containing the words UUNIQUE or a similar term.

**Request No. 20**

Such documents as will permit the identification of all persons and firms, including but not limited to, advertising or sales agents, that have promoted or will promote the sale of the Applicant's, or Applicant's business(es), goods or services in the United States.

**Request No. 21**

Such documents as will permit the identification of all persons, firms, or other entities that have manufactured, designed or developed the Applicant's goods intended to be marketed under or by reference to the UUNIQUE mark in the United States.

**Request No. 22**

Documents which refer or relate to any search or investigation by Applicant or Applicant's business(es) of any uses of names or marks containing the word UUNIQUE by any other company.

**Request No. 23**

All documents which refer or relate to Applicant's intention to use UUNIQUE as a mark in the United States.

**Request No. 24**

All documents which refer or relate to the selection and adoption of the mark UUNIQUE.

**Request No. 25**

All documents which refer or relate to the meaning or pronunciation of the word UUNIQUE.

**Request No. 26**

All documents relating in any way to the manner in which any of the goods or services offered or intended to be offered under Applicant's UUNIQUE mark are sold or will be sold in the United States.

**Request No. 27**

All documents exchanged between Applicant or Applicant's business(es) and any other parties involved in any opposition or cancellation proceeding, trademark litigation, unfair competition action, or any other civil action relating in any manner to the UUNIQUE mark.

**Request No. 28**

Any opinion or analysis concerning the use or the right to use of the UUNIQUE mark in the United States.

**Request No. 29**

All documents which support any allegation in Applicant's "Answer to Notice of Opposition" dated April 30, 2015.

**Request No. 30**

All documents provided to investors which refer to goods distributed or intended to be distributed in the United States under or with reference to the UUNIQUE mark.

**REQUESTS FOR ADMISSION**

Opposer hereby requests that Applicant admit, for purposes of this opposition proceeding only, the truth of the matters set forth below. In accordance with Fed. R. Civ. P. 36(a), the answer must admit the matter; or specifically deny the matter; or set forth in detail the reasons why Applicant cannot truthfully admit or deny the matter. Applicant may not give lack of information or knowledge as a reason for failure to admit or deny unless Applicant states that it has made reasonable inquiry and that the information known or readily obtainable by Applicant is insufficient to enable it to admit or deny.

**Request for Admission No. 1**

The goods that Applicant sells or intends to sell in the United States under the UUNIQUE mark are competitive with goods sold by Opposer.

**Request for Admission No. 2**

Applicant's goods are intended to be sold to the same class of customers to which Opposer sells cameras, mobile phones, tablets, batteries and accessories for each, including mobile phone covers.

**Request for Admission No. 3**

The appearance of UNIQUE and UUNIQUE is highly similar.

**Request for Admission No. 4**

The sound of UNIQUE and UUNIQUE is highly similar.

**Request for Admission No. 5**

Goods sold by Opposer, including cameras, mobile phones, tablets, batteries and accessories for each, including mobile phone covers, are similar to those identified by Applicant in his Application to register the UUNIQUE mark.

**Request for Admission No. 6**

Applicant has not established any common law rights in and to the UUNIQUE mark in the United States.

**Request for Admission No. 7**

Applicant does not have any state or federal registrations for the UUNIQUE mark in the United States.

**Request for Admission No. 8**

Consumers purchasing cameras, mobile phones, tablets, batteries and accessories for each, including mobile phone covers, from Applicant in the United States, would be confused as to the source of the goods and/or services where such goods and/or services are identified as UUNIQUE.

**Request for Admission No. 9**

Applicant or Applicant's business(es) have accepted orders to purchase goods and/or services from the United States.

**Request for Admission No. 10**

Applicant or Applicant's business(es) have shipped orders to purchase goods and/or services from outside of the United States into the United States.

LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP

Dated: December 1, 2015

By: /Daniel P. Laine/

Daniel P. Laine  
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Litigation@lernerdavid.com

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the within OPPOSER'S INTERROGATORIES NOS. 1-27, REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS NOS. 1-30 AND REQUESTS FOR ADMISSION 1-10 TO APPLICANT was served upon the following applicant of record this first day of December, 2015, by overnight courier and addressed as follows:

**VIA FEDERAL EXPRESS** (+44.0.208.434.3501)  
Attn: Sanjay Agarwal  
Aegis Vision Limited  
Boston Road, Boundary House  
London W7 2QE  
United Kingdom

/Daniel P. Laine/  
Daniel P. Laine

# **EXHIBIT B**

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

UNIQUE PHOTO, INC., :  
 : Mark: UUNIQUE  
 :  
 Opposer, :  
 :  
 v. : Serial Number: 79/153,014  
 :  
 :  
 SANJAY AGARWAL, : Opposition No. 91220956  
 :  
 :  
 Applicant. :

**INTRODUCTION**

The following responses to the interrogatories, requests for admissions and requests for documents and things are provided solely for the purposes of the pending opposition procedure and cannot be used in any other manner. They do not constitute a promise or any part of contract with the other party and I reserve my right to change my opinion regarding any answer at any time, including about past facts, stated opinions about any past or future facts, circumstances, or persons. No liability will be accepted based on any of the answers.

**INTERROGATORIES**

**Interrogatory No. 1**

Describe in detail all goods on which Applicant has used, or intends to use, the UUNIQUE mark in the United States.

The list of the products that I have provided with my application is full and exhaustive. The products are grouped into four sets that are corresponding to the Nice classification of good and services:

- (a) Class nine: Mobile phone cases; camera cases; laptop cases, including bags, sleeves and pouches specially adapted for laptops; cases adapted for electronic equipment, namely, cases adapted for electronic diaries and portable media players; mobile phone accessories, namely, lanyards, pendants and charms all specially adapted for mobile phones; hands free kits for mobile phones; battery chargers for mobile phones; headphones; audio speakers; speakers, namely, bass speakers, loud speakers; audio equipment, namely, speakers; car audio speakers; personal stereos; stereo apparatus,

namely, stereo tuners; stereo amplifiers; stereos, namely, stereo receivers; computer docking stations; portable music player docking stations; mobile phone docking stations; MP3 player docking stations; mobile radio transmitting apparatus; earphones; sound generation apparatus, namely, portable media players; sound amplification apparatus, namely, amplifiers; sound reproduction apparatus; sunglasses and sunglasses cases

- (b) Class fourteen: Jewellery consisting of a combination bracelet and watch; electronic watches; watches incorporating a memory function; watches incorporating automatic generating systems; watches capable of synchronisation with handheld devices; precious metals and their alloys; jewellery including watches, costume jewellery, precious stones; horological and chronometric instruments, clocks and watches
- (c) Class eighteen: Leather and imitations of leather; animal skins and hides; trunks and travelling bags; handbags, rucksacks, purses; umbrellas
- (d) Class twenty-five: Clothing, namely, gloves; gloves; gloves with touch technology, namely, gloves with conductive fingertips that may be worn while using handheld electronic touch screen devices; gloves adapted for use with handheld devices; clothing, namely, shirts, pants, jackets, scarfs; footwear; headgear, namely, hats and caps

**Interrogatory No. 2**

Describe in detail all services for which Applicant has used, or intends to use, the UUNIQUE mark in the United States.

I am not aiming to provide any services (within the meaning of this term as it is established in Nice Agreement).

**Interrogatory No. 3**

For each good identified in the answer to Interrogatory No. 1, provide the date upon which the UUNIQUE mark was first used in commerce in the United States.

None of the goods identified in the answers to Interrogatory No. 1 has been used in commerce in the United States of America yet.

**Interrogatory No. 4**

For each service identified in the answer to Interrogatory No. 2, provide the date upon which the UUNIQUE mark was first used in commerce in the United States.

I am not aiming to provide any services (within the meaning of this term as it is established in Nice Agreement) which would bear UUNIQUE trademark.

**Interrogatory No. 5**

For each good and service identified in the answers to Interrogatory Nos. 1 and 2, identify each and every trademark in addition to Applicant's UUNIQUE mark that Applicant has used or intends to use in the marketing of the goods or services in the United States which include any form of the word "unique."

I haven't yet considered this matter and at this stage I am not planning to use any form of the word "unique" in the marketing of the goods.

**Interrogatory No. 6**

In addition to Aegis Vision Ltd. and [www.uunique.uk.com](http://www.uunique.uk.com), identified in the Answer to the Notice of Opposition on April 30, 2015, identify whether UUNIQUE is being used in another business or for any other good or service.

UUNIQUE is not used in any other business or in relation to any other goods or services in the United States of America.

**Interrogatory No. 7**

Identify and describe all advertising and promotional activities conducted by Applicant or Applicant's business(es) with respect to Applicant's goods and services using the UUNIQUE mark in the United States, and provide all documents which refer or relate to such advertising and promotional activities.

The trademark UUnique was represented at CES 2015 organised by Brightstar in Las Vegas – one of the biggest consumer electronic shows in the world.

**Interrogatory No. 8**

Identify all channels of trade by which goods are sold or distributed or are intended to be sold or distributed under Applicant's UUNIQUE mark outside the United States.

My application for registration of UUNIQUE trademark is only related to my prospective business plans in the United States and therefore I do not consider that this question is related to the pending opposition procedure.

**Interrogatory No. 9**

Identify all channels of trade by which goods are sold or distributed or are intended to be sold or distributed under Applicant's UUNIQUE mark inside the United States.

The goods are intended to be sold via mobile accessories distributors, mobile specialist stores and fashion channels selling technological products.

**Interrogatory No. 10**

Identify the persons employed by Applicant or Applicant's business(es) who are most knowledgeable regarding the use or plans for use of the UUNIQUE mark by Applicant in the United States.

As soon as any opportunity arises, I might use the expertise of certain persons that would be employed at that time by my business, but all final decision regarding the plans for use of the UUNIQUE mark will be taken by myself.

**Interrogatory No. 11**

Identify the persons employed by Applicant or Applicant's business(es) who are most knowledgeable regarding enforcement of trademark rights by Applicant in the United States.

There are no persons that I am acquainted with that have specific knowledge on enforcement of trademark rights by myself in the United States of America.

**Interrogatory No. 12**

Describe in detail the facts and circumstances under which the Applicant or Applicant's business(es) first became aware of Opposer's mark(s), including the date when Applicant or Applicant's business(es) first became aware of such mark, the persons who first became aware, and all decisions or actions discussed or taken based on such information.

I have never been aware of the Opposer's marks and I have absolutely no knowledge on them beyond the pending opposition proceedings. The Opposer's marks have never been subject of any particular interest to me and therefore I have never discussed or taken any decisions or actions that could be related to the Opposer's trademarks or business in general.

**Interrogatory No. 13**

Identify and describe in detail any opposition or cancellation proceeding, or trademark litigation, unfair competition action, or any other civil action in the United States relating in any manner to the UUNIQUE mark that Applicant or Applicant's business(es) has been involved in.

I have never been involved in any opposition or cancellation proceeding, or trademark litigation, unfair competition action, or any other civil action in the United States relating in any manner to the UUNIQUE mark.

**Interrogatory No. 14**

Identify and describe each poll, survey, consumer study, or other market research project directed to the United States commenced or completed by Applicant or by Applicant's business(es) with respect to the UUNIQUE mark.

For the purposes of establishing the strength of similar marks, I made a survey on the trademarks that have already been registered and that: (i) contained the word 'unique' and (ii) have products in class nine which are identical with the products that are included in my application for registration (none of your marks have products that are registered in any of the classes that I have applied for):

	Mark	Class/Goods-Services	Owner	App; Reg # and Date
1.	UNICO (English: UNIQUE)	9: cell phones, cellular phones; digital cellular phones, mobile phones, smart phones	ZTE (USA), Inc. of Texas	4711850; Reg. March 31, 2015.  No Opp by UP; pub for opp March 31, 2015.
2.	UNIQUE WIRELESS (WIRELESS disclaimed)	9: cell phones, cell phone cases, many protective cases, including those with power supply connectors, adapters, speakers, and batter charging devices for use with cell phones, cell	Z's Imports and Distributors, Texas.	4579304; Reg. August 5, 2014.

		phone battery chargers, tons of related goods		Pub for opp May 20, 2014. No opp.
3.	UNIQUE AS YOU	9: protective covers for cell phones, laptops, portable media players	Papernomad USA of Colorado	4453886, Reg. Dec. 24, 2013
4.	L'ART D'ETRE UNIQUE	9: optical apparatus and instruments, spectacles, sunglasses and magnifying glasses; apparatus for the recording and transmission and reproduction of sound and images.	Cartier International	4311047; Reg. April 2, 2013.
5.	THE RARE, THE UNIQUE, THE IMAGINATIVE	42: mail order catalog featuring novelty and gift items and clothing and a variety of household items	Gumps	1913986; Reg. Aug. 22, 1995.
6.	BE UNIQUE	35: On-line retail store services featuring a variety of consumer electronic goods and accessories for cellular telephones and tablets, namely, wall chargers, car chargers, cables and mobile batteries; On-line wholesale and retail store services featuring a variety of consumer electronic goods and accessories for cellular telephones and tablets  First use alleged 5/27/2015	Battery Bix	86690184; App. filed 7/10/2015
7.	BE UNIQUE and design	Same	Same	86690181; App. filed 7/10/2015
8.	BOUTIQUE AT WOODLANDS UNIQUE	35: On-line retail store services featuring a wide variety of consumer goods of others; Retail store services featuring a wide variety of consumer goods of others.	D&K Clock	86374784; App. filed 8/22/14  Pub for opp 7/30/15

		First use alleged 8/18/2014		
9.	UNIQUE IMPORTS BETTER SERVICE  (sr)	35: Retail store service featuring automotive accessories, sports equipment, electronics, and kitchen utensils and supplies  First use 8/1/2009	Uniko	4675893; Reg. 1/20/2015
10.	UNIQUE SOURCE	35: On-line retail store services featuring a wide variety of consumer goods of others; Operation of telephone call centers for others; Retail store services featuring a wide variety of consumer goods of others  First use 8/17/2014	Unique Source Products	4660723; Reg. issued 12/23/2014
11.	CULTURED UNIQUE	035: online ordering services, mail order services, online ordering services, wholesale and retail services featuring, among other things, watches, bags, backpacks, etc.  First use 1-2010	Christopher Sowell	4139099; Reg. 5/8/2012
12.	UNIQUE, AUTHENTIC AND ALWAYS AFFORDABLE	35: retail store services featuring general merchandise; online retail store services featuring general merchandise  First use 7-2008	Cost Plus Management	4450980; Reg. 12/17/2013

13.	UNIQUE HOME FURNITURE (HOME FURNITURE disclaimed) and 2f	035: retail store services featuring, among other things, electronics.  First use 9-2005	Shahsultana	4387034; Reg. 8/20/2013
14.	UNIQUE GIFTS. GADGET STYLE	35: Computerized on-line ordering featuring general merchandise and general consumer goods; On-line retail gift shops; Operating an on-line shopping site in the field of Gifts  First use 1/15/2007	Convenient	4229886; Reg. 10/23/2012
15.	U UNIQUESQUARED BE U BE UNIQUE	035: On-line retail store services featuring audio equipment  First use 9/20/2010	Unique Squared	4117789; Reg. 3/27/2012
16.	U2 UNIQUE SQUARED	.35: On-line retail store services featuring pro audio and video equipment, recording equipment, recording software, DJ equipment, lighting equipment, producing equipment, and instruments  First use 7/1/2009	Unique Squared	3872762; Reg. 11/9/2010

**Interrogatory No. 15**

For each poll, survey, consumer study, or other market research project identified in the answer to Interrogatory No. 14, identify each third party that has cooperated in any way with Applicant or Applicant's business(es), and describe the nature and details of such cooperation.

There have been on third parties that cooperated in any way with me in relation to the above table.

**Interrogatory No. 16**

Provide a copy of each trademark search commissioned by Applicant or Applicant's business(es) for any mark containing the word UUNIQUE or any similar word for purposes of determining whether the UUNIQUE mark can be used in the United States.

For the purposes of establishing the strength of similar marks, I made a survey on the trademarks that have already been registered and that: (i) contained the word 'unique' and (ii) have products in class nine which are identical with the products that are included in my application for registration (none of your marks have products that are registered in any of the classes that I have applied for):

	Mark	Class/Goods-Services	Owner	App; Reg # and Date
1.	UNICO (English: UNIQUE)	9: cell phones, cellular phones; digital cellular phones, mobile phones, smart phones	ZTE (USA), Inc. of Texas	4711850; Reg. March 31, 2015.  No Opp by UP; pub for opp March 31, 2015.
2.	UNIQUE WIRELESS (WIRELESS disclaimed)	9: cell phones, cell phone cases, many protective cases, including those with power supply connectors, adapters, speakers, and batter charging devices for use with cell phones, cell phone battery chargers, tons of related goods	Z's Imports and Distributors, Texas.	4579304; Reg. August 5, 2014.  Pub for opp May 20, 2014. No opp.
3.	UNIQUE AS YOU	9: protective covers for cell phones, laptops, portable media players	Papernomad USA of Colorado	4453886, Reg. Dec. 24, 2013
4.	L'ART D'ETRE UNIQUE	9: optical apparatus and instruments, spectacles, sunglasses and magnifying glasses; apparatus for the recording and transmission and reproduction of sound and images.	Cartier International	4311047; Reg. April 2, 2013.
5.	THE RARE, THE UNIQUE, THE IMAGINATIVE	42: mail order catalog featuring novelty and gift items and clothing and a variety of household items	Gumps	1913986; Reg. Aug. 22, 1995.

6.	BE UNIQUE	35: On-line retail store services featuring a variety of consumer electronic goods and accessories for cellular telephones and tablets, namely, wall chargers, car chargers, cables and mobile batteries; On-line wholesale and retail store services featuring a variety of consumer electronic goods and accessories for cellular telephones and tablets  First use alleged 5/27/2015	Battery Bix	86690184; App. filed 7/10/2015
7.	BE UNIQUE and design	Same	Same	86690181; App. filed 7/10/2015
8.	BOUTIQUE AT WOODLANDS UNIQUE	35: On-line retail store services featuring a wide variety of consumer goods of others; Retail store services featuring a wide variety of consumer goods of others.  First use alleged 8/18/2014	D&K Clock	86374784; App. filed 8/22/14  Pub for opp 7/30/15
9.	UNIQUE IMPORTS BETTER SERVICE (sr)	35: Retail store service featuring automotive accessories, sports equipment, electronics, and kitchen utensils and supplies  First use 8/1/2009	Uniko	4675893; Reg. 1/20/2015
10.	UNIQUE SOURCE	35: On-line retail store services featuring a wide variety of consumer goods of others; Operation of telephone call centers for others; Retail store services featuring a wide	Unique Source Products	4660723; Reg. issued 12/23/2014

		variety of consumer goods of others		
		First use 8/17/2014		
11.	CULTURED UNIQUE	035: online ordering services, mail order services, online ordering services, wholesale and retail services featuring, among other things, watches, bags, backpacks, etc.	Christopher Sowell	4139099; Reg. 5/8/2012
		First use 1-2010		
12.	UNIQUE, AUTHENTIC AND ALWAYS AFFORDABLE	35: retail store services featuring general merchandise; online retail store services featuring general merchandise	Cost Plus Management	4450980; Reg. 12/17/2013
		First use 7-2008		
13.	UNIQUE HOME FURNITURE (HOME FURNITURE disclaimed) and 2f	035: retail store services featuring, among other things, electronics.	Shahsultana	4387034; Reg. 8/20/2013
		First use 9-2005		
14.	UNIQUE GIFTS. GADGET STYLE	35: Computerized on-line ordering featuring general merchandise and general consumer goods; On-line retail gift shops; Operating an on-line shopping site in the field of Gifts	Convenient	4229886; Reg. 10/23/2012
		First use 1/15/2007		
15.	U UNIQUESQUARED BE U BE UNIQUE	035: On-line retail store services featuring audio equipment	Unique Squared	4117789; Reg. 3/27/2012

		First use 9/20/2010		
16.	U2 UNIQUE SQUARED	.35: On-line retail store services featuring pro audio and video equipment, recording equipment, recording software, DJ equipment, lighting equipment, producing equipment, and instruments	Unique Squared	3872762; Reg. 11/9/2010
		First use 7/1/2009		

Apart from that, I have already registered by trademark UU in the United States, which is the abridged form of UUNIQUE mark and which has been part of my corporate identity along with UUNIQUE for many years.

**Interrogatory No. 17**

Identify all United States based trade shows or conventions attended by Applicant or other persons associated with Applicant's business(es) during the last three years, and state the activities of Applicant at such shows or conventions (e.g., exhibiting, attending, and/or training).

The trademark UUnique was represented at CES 2015 organised by Brightstar in Las Vegas – one of the biggest consumer electronic shows in the world.

**Interrogatory No. 18**

Describe fully the origin of the term UUNIQUE as used in Applicant's UUNIQUE mark and identify all documents that refer or relate to the origin.

The term UUNIQUE is an abridged version of the expression 'YOU ARE UNIQUE', but there are no specific documents that are related to this origin.

**Interrogatory No. 19**

Identify what Applicant considers to be the correct phonetic pronunciation of the mark UUNIQUE, its phonetic usage by consumers, and its intended meaning in the context of the goods offered under the mark.

The correct phonetic pronunciation of the mark UUNIQUE is /juʒə'ni:k/ and its intended meaning is related to this quality of consumers (being unique) when they are using the goods offered under the mark.

**Interrogatory No. 20**

State all known facts in support of Applicant's contentions in paragraphs 11 through 34 of the Answer to Notice of Opposition dated April 30, 2015.

All statements that have been in the document that you are referring to, are supported by all facts that I have been acquainted with at the time the document was executed and therefore I have no knowledge of any further facts that might be related to these statements.

**Interrogatory No. 21**

Identify all competitors of Applicant or Applicant's business(es) in the United States.

I have not made any detailed research related to competitors that I might have in the United States, but there are thousands of companies that are competitors of my business in the United States and therefore such identification is impossible and further to that, it is not related to the merits of the present opposition procedure.

**Interrogatory No. 22**

To the extent Applicant or Applicant's business(es) have not entered the United States, identify when Applicant or Applicant's business(es) intend to do so.

I am planning to enter the United States' market after the registration of UUNIQUE trademark. However, as I have already registered another trademark – UU, which is the abridged form of UUNIQUE I might decide to use this trademark only in the United States before the end of the present opposition proceeding.

**Interrogatory No. 23**

To the extent that Applicant or Applicant's business(es) intend to enter the United States at different times for different goods and/or services, identify each good and/or service and the intended date of entry.

I have no specific plans of when a particular good will enter the United States' market.

**Interrogatory No. 24**

Identify any goods or services not identified in Interrogatory No. 23 for which Applicant or Applicant's business(es) intend to enter the United States but for which no date of entry has been contemplated.

I have no specific plans of when a particular good will enter the United States' market.

**Interrogatory No. 25**

Identify each person whom Applicant expects to call as a witness during his testimony period and, for each such person, state the substance of the facts and opinions to which such witness is expected to testify, and identify all documents in which such witness intends to rely on for its testimony, or refers or relates to expected testimony.

At this moment I do not intend to call any witnesses.

**Interrogatory No. 26**

For each Interrogatory, identify each person who was consulted to obtain information to answer such Interrogatory, who contributed information from which the answer to such Interrogatory was derived, and who prepared the answer to the Interrogatory.

For responding to each interrogatory I have consulted a number of persons, but all final decisions were taken solely by myself.

**Interrogatory No. 27**

For each Request for Admission that Applicant responds to and denies in whole or in part, state the basis for the denial, and specify and identify all facts and documents and other evidence to support the denial.

Request for Admission No. 1

The goods that Applicant sells or intends to sell in the United States under the UUNIQUE mark are competitive with goods sold by Opposer.

There are no common goods between those registered or sold by the opposer and those that are enlisted in my application for registration.

Request for Admission No. 2

Applicant's goods are intended to be sold to the same class of customers to which Opposer sells cameras, mobile phones, tablets, batteries and accessories for each, including mobile phone covers.

The products that will be sold under UUNIQUE trademark are intended to the general public and therefore no specific class of customers might be identified thereof.

Request for Admission No. 3

The appearance of UNIQUE and UUNIQUE is highly similar.

The marks are different in their visual and semantic perception and therefore they are not highly similar.

Request for Admission No. 4

The sound of UNIQUE and UUNIQUE is highly similar.

The sound of these two marks is different.

Request for Admission No. 5

Goods sold by Opposer, including cameras, mobile phones, tablets, batteries and accessories for each, including mobile phone covers, are similar to those identified by Applicant in his Application to register the UUNIQUE mark.

The goods that are included in my application are different than those, included in the opposer's trademark registration. These goods are not even within the same class of products established by the Nice agreement.

Request for Admission No. 6

Applicant has not established any common law rights in and to the UUNIQUE mark in the United States.

The Applicant has never used the trademark UUNIQUE in the United States before.

Request for Admission No. 8

Consumers purchasing cameras, mobile phones, tablets, batteries and accessories for each, including mobile phone covers, from Applicant in the United States, would be confused as to

the source of the goods and/or services where such goods and/or services are identified as UUNIQUE.

The consumers would not be confused, because of the differences in the trademarks, trade channels and the products that are sold by my business and the opposer.

**Request for Admission No. 9**

Applicant or Applicant's business(es) have accepted orders to purchase goods and/or services from the United States.

I have never accepted orders to purchase goods and/or services from the United States.

**Request for Admission No. 10**

Applicant or Applicant's business(es) have shipped orders to purchase goods and/or services from outside of the United States into the United States.

I have never shipped orders to purchase goods and/or services from outside of the United States into the United States.

### **Requests for Admission**

**Request for Admission No. 1**

The goods that Applicant sells or intends to sell in the United States under the UUNIQUE mark are competitive with goods sold by Opposer.

This allegation is denied.

**Request for Admission No. 2**

Applicant's goods are intended to be sold to the same class of customers to which Opposer sells cameras, mobile phones, tablets, batteries and accessories for each, including mobile phone covers.

This allegation is denied.

**Request for Admission No. 3**

The appearance of UNIQUE and UUNIQUE is highly similar.

This allegation is denied.

**Request for Admission No. 4**

The sound of UNIQUE and UUNIQUE is highly similar.

This allegation is denied.

**Request for Admission No. 5**

Goods sold by Opposer, including cameras, mobile phones, tablets, batteries and accessories for each, including mobile phone covers, are similar to those identified by Applicant in his Application to register the UUNIQUE mark.

This allegation is denied.

**Request for Admission No. 6**

Applicant has not established any common law rights in and to the UUNIQUE mark in the United States.

The Applicant has never used the trademark UUNIQUE in the United States before.

**Request for Admission No. 7**

Applicant does not have any state or federal registrations for the UUNIQUE mark in the United States.

This allegation is admitted.

**Request for Admission No. 8**

Consumers purchasing cameras, mobile phones, tablets, batteries and accessories for each, including mobile phone covers, from Applicant in the United States, would be confused as to the source of the goods and/or services where such goods and/or services are identified as UUNIQUE.

This allegation is denied.

**Request for Admission No. 9**

Applicant or Applicant's business(es) have accepted orders to purchase goods and/or services from the United States.

This allegation is denied.

**Request for Admission No. 10**

Applicant or Applicant's business(es) have shipped orders to purchase goods and/or services from outside of the United States into the United States.

This allegation is denied.

**Requests for Documents and Things**

**Request No. 1**

All documents identified, or the identification of which is requested, in Interrogatories Nos. 1-27 to Applicant.

We have not identified any documents in relation to the Interrogatories Nos. 1-27 to Applicant.

**Request No. 2**

All documents which form the file of submissions to and from the U.S. Patent and Trademark Office of Applicant's application(s) and registration(s) relating to any mark consisting in whole or in part of UUNIQUE, or which refer or relate to such application(s) and registration(s).

There are no other documents apart from those that are already available publicly in the websites of the U.S. Patent and Trademark Office that are related to the application to the mark UUNIQUE.

**Request No. 3**

Copies of any United States trademark or service mark searches undertaken by and/or on behalf of Applicant or Applicant's business(es) relating to any mark consisting in whole or in part of UUNIQUE or any similar marks for purposes of determining whether the UUNIQUE mark can be used in the United States.

For the purposes of establishing the strength of similar marks, I made a survey on the trademarks that have already been registered and that: (i) contained the word 'unique' and (ii) have products in class nine which are identical with the products that are included in my application for registration (none of your marks have products that are registered in any of the classes that I have applied for):

	Mark	Class/Goods-Services	Owner	App; Reg # and Date
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2.	UNIQUE WIRELESS (WIRELESS disclaimed)	9: cell phones, cell phone cases, many protective cases, including those with power supply connectors, adapters, speakers, and batter charging devices for use with cell phones, cell phone battery chargers, tons of related goods	Z's Imports and Distributors, Texas.	4579304; Reg. August 5, 2014.  Pub for opp May 20, 2014. No opp.
3.	UNIQUE AS YOU	9: protective covers for cell phones, laptops, portable media players	Papernomad USA of Colorado	4453886, Reg. Dec. 24, 2013
4.	L'ART D'ETRE UNIQUE	9: optical apparatus and instruments, spectacles, sunglasses and magnifying glasses; apparatus for the recording and transmission and reproduction of sound and images.	Cartier International	4311047; Reg. April 2, 2013.

5.	THE RARE, THE UNIQUE, THE IMAGINATIVE	42: mail order catalog featuring novelty and gift items and clothing and a variety of household items	Gumps	1913986; Reg. Aug. 22, 1995.
6.	BE UNIQUE	35: On-line retail store services featuring a variety of consumer electronic goods and accessories for cellular telephones and tablets, namely, wall chargers, car chargers, cables and mobile batteries; On-line wholesale and retail store services featuring a variety of consumer electronic goods and accessories for cellular telephones and tablets  First use alleged 5/27/2015	Battery Bix	86690184; App. filed 7/10/2015
7.	BE UNIQUE and design	Same	Same	86690181; App. filed 7/10/2015
8.	BOUTIQUE AT WOODLANDS UNIQUE	35: On-line retail store services featuring a wide variety of consumer goods of others; Retail store services featuring a wide variety of consumer goods of others.  First use alleged 8/18/2014	D&K Clock	86374784; App. filed 8/22/14  Pub for opp 7/30/15
9.	UNIQUE IMPORTS BETTER SERVICE (sr)	35: Retail store service featuring automotive accessories, sports equipment, electronics, and kitchen utensils and supplies  First use 8/1/2009	Uniko	4675893; Reg. 1/20/2015
10.	UNIQUE SOURCE	35: On-line retail store services featuring a wide variety of consumer goods of others; Operation of telephone call centers for	Unique Source Products	4660723; Reg. issued 12/23/2014

		others; Retail store services featuring a wide variety of consumer goods of others  First use 8/17/2014		
11.	CULTURED UNIQUE	035: online ordering services, mail order services, online ordering services, wholesale and retail services featuring, among other things, watches, bags, backpacks, etc.  First use 1-2010	Christopher Sowell	4139099; Reg. 5/8/2012
12.	UNIQUE, AUTHENTIC AND ALWAYS AFFORDABLE	35: retail store services featuring general merchandise; online retail store services featuring general merchandise  First use 7-2008	Cost Plus Management	4450980; Reg. 12/17/2013
13.	UNIQUE HOME FURNITURE (HOME FURNITURE disclaimed) and 2f	035: retail store services featuring, among other things, electronics.  First use 9-2005	Shahsultana	4387034; Reg. 8/20/2013
14.	UNIQUE GIFTS. GADGET STYLE	35: Computerized on-line ordering featuring general merchandise and general consumer goods; On-line retail gift shops; Operating an on-line shopping site in the field of Gifts  First use 1/15/2007	Convenient	4229886; Reg. 10/23/2012

15.	U UNIQUESQUARED BE U BE UNIQUE	035: On-line retail store services featuring audio equipment  First use 9/20/2010	Unique Squared	4117789; Reg. 3/27/2012
16.	U2 UNIQUE SQUARED	.35: On-line retail store services featuring pro audio and video equipment, recording equipment, recording software, DJ equipment, lighting equipment, producing equipment, and instruments  First use 7/1/2009	Unique Squared	3872762; Reg. 11/9/2010

**Request No. 4**

All documents evidencing or relating to any unsolicited publicity or recognition obtained or received by Applicant in the United States in relation to Applicant's services or Applicant's goods offered under or by reference to the UUNIQUE mark.

We have not conducted any activities related to prospective usage of the UUNIQUE trademark in the United States and therefore there are no documents that are evidencing or relating to any unsolicited publicity or recognition obtained or received by me.

**Request No. 5**

Documents that set forth, establish, or substantiate the dates upon which Applicant or Applicant's business(es) commenced use in commerce of the UUNIQUE mark in connection with: (1) each of Applicant's goods that use the UUNIQUE mark and (2) each of Applicant's services that use the UUNIQUE mark, to the extent the Applicant or Applicant's business(es) have used the UUNIQUE mark in connection with goods and services in the United States.

I have never used UUNIQUE trademark in relation to any sales in the United States so far.

**Request No. 6**

Such documents as will permit the identification of: (a) All outlets in the United States or accessible from the United States for sale or proposed sale of each good and service which has been offered by Applicant or Applicant's business(es) under or by reference to Applicant's UUNIQUE mark; (b) All present, proposed or contemplated distributors and/or licensees offering goods or services in the United States under or by reference to Applicant's UUNIQUE mark; and (c) Any other outlets where any good or service has been offered or will be offered in the United States by Applicant or Applicant's business(es), under or by reference to Applicant's UUNIQUE mark.

I have never used UUNIQUE trademark in relation to any sales in the United States so far and I have no specific plans related to the elements of my prospective business in the United States mentioned above.

**Request No. 7**

Representative specimens or samples of all advertising of any form, commercial material, brochures, product description materials, and other literature which refer or relate to all goods sold or distributed or services offered, or intended to be offered, in the United States by Applicant or Applicant's business(es) in connection with any mark consisting in whole or in part of UUNIQUE, including but not limited to, newspapers, magazines, trade journals, catalogs, packaging, price lists, packaging, labels, signs, containers, boxes, bags, tags, wrappers, package inserts and other business materials which have been distributed by or on behalf of Applicant for each year from the date Applicant claims he first shipped orders for goods to the United States under the UUNIQUE mark or otherwise used the mark in the United States to the present date.

No such specimens or samples are available as I have not prepared any advertising materials yet.

**Request No. 8**

All documents which refer or relate in any way to any instances of actual confusion between Applicant and any third party with respect to any mark consisting in whole or in part of UUNIQUE.

There has been no cases of confusion between my business and any third party with respect to any mark consisting in whole or in part of UUNIQUE.

**Request No. 9**

All documents which refer or relate in any way to any instances of actual confusion between Applicant and Opposer with respect to any mark consisting in whole or in part of UUNIQUE.

There has been no cases of confusion between my business and the opposer with respect to any mark consisting in whole or in part of UUNIQUE.

**Request No. 10**

All documents which refer or relate in any way to third party commercial use of the word UUNIQUE.

We have no information of any third party's commercial use of the word UUNIQUE

**Request No. 11**

All documents relating to any efforts by Applicant or Applicant's business(es) to defend his rights in the UUNIQUE mark against claims asserted by third parties.

There have been no claims asserted by third parties relating to my rights with regard to UUNIQUE trademark.

**Request No. 12**

All documents that Applicant was aware of prior to filing his application for registration of UUNIQUE which refer or relate to Opposer or to Opposer's UNIQUE marks.

I am not in possession of any documents which refer or relate to Opposer or to Opposer's UUNIQUE marks.

**Request No. 13**

Documents sufficient to show Applicant's or Applicant's business(es) annual advertising expenses for goods and services marketed in connection with the UUNIQUE mark since its inception.

The mark has not been used in the United States and therefore no advertising expenses have been incurred.

**Request No. 14**

Documents sufficient to show Applicant's or Applicant's business(es) total sales in the United States for goods and services under the UUNIQUE mark in each of the last three years.

There have been no sales in the United States for goods and services under the UUNIQUE mark in each of the last three years.

**Request No. 15**

All documents which constitute, relate, or refer to any assignment, license, or other transfer of any rights to or from Applicant relating to any mark consisting in whole or in part of UUNIQUE.

No assignment, license, or other transfer of any rights to or from me relating to any mark consisting in whole or in part of UUNIQUE have ever been made.

**Request No. 16**

All documents that refer to or relate to Applicant's decision to apply to register Applicant's applications and registrations in the United States Patent and Trademark Office in connection with any mark consisting in whole or in part of UUNIQUE.

There are no other documents apart from those that are already available publicly in the websites of the U.S. Patent and Trademark Office that are related to the application to the mark UUNIQUE. However, I have already registered another trademark in the United States – UU which is the abridged form of UUNIQUE. Information about UU mark can be found on the website of the United States Patent and Trademark Office. This is the abridged information about the mark:



**Word Mark**

UU

**Goods and Services**

IC 009. US 021 023 026 036 038. G & S: Mobile phone cases, camera cases, and laptop cases, namely, bags, sleeves and pouches; cases adapted

for electronic equipment, namely, cell phones; mobile phone accessories, namely, lanyards, pendants and charms; hands free kits for mobile phones; chargers for mobile phones; sunglasses and sunglass cases

IC 014. US 002 027 028 050. G & S: Precious metals and their alloys; jewellery, costume jewellery, precious stones; horological and chronometric instruments, clocks and watches

IC 018. US 001 002 003 022 041. G & S: Leather and imitations of leather; animal skins, hides; trunks and travelling bags; handbags, rucksacks, purses; umbrellas

IC 025. US 022 039. G & S: Clothing, namely, scarfs, footwear, headgear, namely, hats and caps

<b>Mark Drawing Code</b>	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
<b>Serial Number</b>	79152236
<b>Filing Date</b>	May 13, 2014
<b>Current Basis</b>	66A
<b>Original Filing Basis</b>	66A
<b>Published for Opposition</b>	April 21, 2015
<b>Registration Number</b>	4766488
<b>International Registration Number</b>	1216532
<b>Registration Date</b>	July 7, 2015
<b>Owner</b>	(REGISTRANT) Sanjay Agarwal INDIVIDUAL UNITED KINGDOM Aegis Vision Limited Boundary House, Boston Road London W7 2QE UNITED KINGDOM
<b>Description of Mark</b>	Color is not claimed as a feature of the mark. The mark consists of a large letter "U" in stylized font. Within the large letter "U" is a smaller letter "U", also in stylized font.
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

**Request No. 17**

All documents which refer or relate to all opposition or cancellation proceedings, trademark litigations, unfair competition actions, or any other civil action relating in any manner to any mark consisting in whole or in part of UUNIQUE in the United States.

There have been no opposition or cancellation proceedings, trademark litigations, unfair competition actions, or any other civil action relating in any manner to any mark consisting in whole or in part of UUNIQUE in the United States.

**Request No. 18**

All documents which refer or relate to all charges of infringement in the United States by or to Applicant or Applicant's business(es) with respect to any mark consisting in whole or in part of UUNIQUE or any similar mark.

There have been no charges or infringements in the United States by or to Applicant or Applicant's business(es) with respect to any mark consisting in whole or in part of UUNIQUE or any similar mark.

**Request No. 19**

Documents which refer or relate to any notice received by Applicant of potentially infringing uses of trade names, trademarks, or service marks by any other entity based on mark(s) containing the words UUNIQUE or a similar term.

I have never received any notice of potentially infringing uses of trade names, trademarks, or service marks by any other entity based on mark(s) containing the words UUNIQUE or a similar term.

**Request No. 20**

Such documents as will permit the identification of all persons and firms, including but not limited to, advertising or sales agents, that have promoted or will promote the sale of the Applicant's, or Applicant's business(es), goods or services in the United States.

I have never used UUNIQUE trademark in relation to any sales in the United States so far and I have not identified any advertising or sales agents that will promote the sale of goods under the trademark UUNIQUE.

**Request No. 21**

Such documents as will permit the identification of all persons, firms, or other entities that have manufactured, designed or developed the Applicant's goods intended to be marketed under or by reference to the UUNIQUE mark in the United States.

I have never used UUNIQUE trademark in relation to any sales in the United States so far and I have not reached any conclusive decision in relation to the persons, firms, or other entities that will manufacture, design or develop any goods that will be marketed under or by reference to the UUNIQUE mark in the United States.

**Request No. 22**

Documents which refer or relate to any search or investigation by Applicant or Applicant's business(es) of any uses of names or marks containing the word UUNIQUE by any other company.

For the purposes of establishing the strength of similar marks, I made a search on the trademarks that have already been registered and that: (i) contained the word 'unique' and (ii) have products in class nine which are identical with the products that are included in my application for

registration (none of your marks have products that are registered in any of the classes that I have applied for):

	Mark	Class/Goods-Services	Owner	App; Reg # and Date
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2.	UNIQUE WIRELESS (WIRELESS disclaimed)	9: cell phones, cell phone cases, many protective cases, including those with power supply connectors, adapters, speakers, and batter charging devices for use with cell phones, cell phone battery chargers, tons of related goods	Z's Imports and Distributors, Texas.	4579304; Reg. August 5, 2014.  Pub for opp May 20, 2014. No opp.
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4.	L'ART D'ETRE UNIQUE	9: optical apparatus and instruments, spectacles, sunglasses and magnifying glasses; apparatus for the recording and transmission and reproduction of sound and images.	Cartier International	4311047; Reg. April 2, 2013.
5.	THE RARE, THE UNIQUE, THE IMAGINATIVE	42: mail order catalog featuring novelty and gift items and clothing and a variety of household items	Gumps	1913986; Reg. Aug. 22, 1995.
6.	BE UNIQUE	35: On-line retail store services featuring a variety of consumer electronic goods and accessories for cellular telephones and tablets, namely, wall chargers, car chargers, cables and mobile	Battery Bix	86690184; App. filed 7/10/2015

		batteries; On-line wholesale and retail store services featuring a variety of consumer electronic goods and accessories for cellular telephones and tablets  First use alleged 5/27/2015		
7.	BE UNIQUE and design	Same	Same	86690181; App. filed 7/10/2015
8.	BOUTIQUE AT WOODLANDS UNIQUE	35: On-line retail store services featuring a wide variety of consumer goods of others; Retail store services featuring a wide variety of consumer goods of others.  First use alleged 8/18/2014	D&K Clock	86374784; App. filed 8/22/14  Pub for opp 7/30/15
9.	UNIQUE IMPORTS BETTER SERVICE (sr)	35: Retail store service featuring automotive accessories, sports equipment, electronics, and kitchen utensils and supplies  First use 8/1/2009	Uniko	4675893; Reg. 1/20/2015
10.	UNIQUE SOURCE	35: On-line retail store services featuring a wide variety of consumer goods of others; Operation of telephone call centers for others; Retail store services featuring a wide variety of consumer goods of others  First use 8/17/2014	Unique Source Products	4660723; Reg. issued 12/23/2014
11.	CULTURED UNIQUE	035: online ordering services, mail order services, online ordering services, wholesale and	Christopher Sowell	4139099; Reg. 5/8/2012

		retail services featuring, among other things, watches, bags, backpacks, etc.		
		First use 1-2010		
12.	UNIQUE, AUTHENTIC AND ALWAYS AFFORDABLE	35: retail store services featuring general merchandise; online retail store services featuring general merchandise	Cost Plus Management	4450980; Reg. 12/17/2013
		First use 7-2008		
13.	UNIQUE HOME FURNITURE (HOME FURNITURE disclaimed) and 2f	035: retail store services featuring, among other things, electronics.	Shahsultana	4387034; Reg. 8/20/2013
		First use 9-2005		
14.	UNIQUE GIFTS. GADGET STYLE	35: Computerized on-line ordering featuring general merchandise and general consumer goods; On-line retail gift shops; Operating an on-line shopping site in the field of Gifts	Convenient	4229886; Reg. 10/23/2012
		First use 1/15/2007		
15.	U UNIQUESQUARED BE U BE UNIQUE	035: On-line retail store services featuring audio equipment	Unique Squared	4117789; Reg. 3/27/2012
		First use 9/20/2010		
16.	U2 UNIQUE SQUARED	.35: On-line retail store services featuring pro audio and video equipment, recording equipment, recording software, DJ equipment, lighting equipment,	Unique Squared	3872762; Reg. 11/9/2010

		producing equipment, and instruments	
		First use 7/1/2009	

**Request No. 23**

All documents which refer or relate to Applicant's intention to use UUNIQUE as a mark in the United States.

Apart from the information that was required for filling in the application for the trademark registration, I have never considered any additional information with regard to the prospective use of the trademark.

**Request No. 24**

All documents which refer or relate to the selection and adoption of the mark UUNIQUE.

I use this trademark in my businesses in other jurisdiction and in relation to my intentions to extend my business to the United States, I applied for registration of UUNIQUE trademark. No specific documents exist that could refer or relate to the selection and adoption of the mark UUNIQUE in the United States.

**Request No. 25**

All documents which refer or relate to the meaning or pronunciation of the word UUNIQUE.

We are in possession of no documents which refer or relate to the meaning or pronunciation of the word UUNIQUE.

**Request No. 26**

All documents relating in any way to the manner in which any of the goods or services offered or intended to be offered under Applicant's UUNIQUE mark are sold or will be sold in the United States.

I have not conducted any business activities in relation to prospective sales of the goods under UUNIQUE trademark in the United States. I am in possession of no documents relating in any way to the manner in which any of the goods or services intended to be offered under UUNIQUE mark will be sold in the United States.

**Request No. 27**

All documents exchanged between Applicant or Applicant's business(es) and any other parties involved in any opposition or cancellation proceeding, trademark litigation, unfair competition action, or any other civil action relating in any manner to the UUNIQUE mark.

There have been no opposition or cancellation proceeding, trademark litigation, unfair competition action, or any other civil action relating in any manner to the UUNIQUE mark.

**Request No. 28**

Any opinion or analysis concerning the use or the right to use of the UUNIQUE mark in the United States.

I have not sought external opinion or analysis concerning the use or the right to use of the UUNIQUE mark in the United States.

**Request No. 29**

All documents which support any allegation in Applicant's "Answer to Notice of Opposition" dated April 30, 2015.

There are no other documents available publicly in the websites of the U.S. Patent and Trademark Office that are related to the application to the mark UUNIQUE than those already published.

**Request No. 30**

All documents provided to investors which refer to goods distributed or intended to be distributed in the United States under or with reference to the UUNIQUE mark.

No documents were provided to investor's which refer to goods distributed or intended to be distributed in the United States under or with reference to the UUNIQUE mark.

Dated: 29 December 2015

By: /Sanjay Agarwal/

Sanjay Agarwal

Telephone/facsimile: +44 - (0) 208 434 3501

Address: Aegis Vision Limited, Boundary House, Boston Road, London W7 2QE

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 29th day of December 2015, a true copy of the foregoing ANSWERS was served in the following manner: **VIA overnight COURRIER at the following addresses:**

DANIEL P LAINE

LERNER DAVID LITTENBERG KRUMHOLZ & MENTLIK

600 SOUTH AVENUE WEST

WESTFIELD, NJ 07090

**UNITED STATES OF AMERICA**

Unique Photo Inc.

123 US Highway 46

Fairfield, NJ 07004

**UNITED STATES OF AMERICA**

**VIA EMAIL at the following addresses:**

dlaine@ldlkm.com, bsales@ldlkm.com, litigation@ldlkm.com

# **EXHIBIT C**

## Mascenik, Pat

---

**From:** Laine, Daniel P  
**Sent:** Thursday, January 07, 2016 7:15 PM  
**To:** 'Sanjay Agarwal'  
**Cc:** Sales, Bruce H; Litigation  
**Subject:** TTAB Opposition No. 91220956: Applicant's Responses to Discovery Requests  
**Attachments:** Agarwal Letter - Opp No 91220956 - Re Applicant's Responses to Discovery - 1-7-2016.pdf

Dear Mr. Agarwal,

Please see our letter, attached.

Best regards,

Daniel P. Laine  
Lerner, David, Littenberg, Krumholz & Mentlik, LLP  
600 South Avenue West  
Westfield, NJ 07090  
Phone: 908-518-6326  
[DLaine@lerner david.com](mailto:DLaine@lerner david.com) <<mailto:DLaine@lerner david.com%20%0d>>

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**SUBJECT TO FEDERAL RULE OF EVIDENCE 408**

January 7, 2016

**VIA E-MAIL** (sanjay@aegis.uk.com)  
Sanjay Agarwal  
Aegis Vision Limited  
Boston Road, Boundary House  
London W7 2QE  
United Kingdom

Re: UPHOTO 10.20-064  
Answers to discovery requests for Opposition No. 91220956

Dear Mr. Agarwal:

We write to address deficiencies in your discovery answers to Interrogatories, Requests for Admission and Requests for Production.

**Improper Qualification**

The statements made by you in your introduction do not conform to the Federal Rules of Civil Procedure (hereinafter “Rules”). You state that “I reserve my right to change my opinion regarding any answer at any time, including about past facts, stated opinions about any past or future facts, circumstances or persons. No liability will be accepted based on any of the answers.” The foregoing statements are improper. Acceptance of the statements would render the entirety of your answers to our requests moot. To the extent allowed under the Federal Rules of Civil Procedure (hereinafter “Rules”), the answers you have provided are admissible for purposes of trial. See, for example, Rules 33(c) and 36(b).

**Verification**

Federal Rule of Civil Procedure 33(b)(3) requires that each interrogatory be answered “fully in writing under oath.” You have not complied with this requirement as the discovery served on our client failed to include any verification statement. Accordingly, your interrogatory answers are not proper and are void. Please immediately provide appropriate sworn verifications to Applicant’s interrogatory answers.

**Interrogatory Answers**

“Identify” as used in the interrogatories, is defined on page 2 of Opposer’s

Sanjay Agarwal  
January 7, 2016  
Page 2

Interrogatories Nos. 1-27, Requests for Production of Documents and Things Nos. 1-30 and Requests for Admission 1-10 to Applicant served on Applicant on December 1, 2015 (hereinafter “Opposer’s Discovery Requests”). Answers to any query to “identify” must be based on the definition as found in Opposer’s Discovery Requests.

In your answer to Interrogatory No. 5, you state that you are “not planning to use any form of the word ‘unique’ in the marketing of goods.” Your answer is unclear. It suggests that you have no basis to obtain a registration, as use is required to register a trademark in the United States. Unless you provide an updated answer, we interpret your answer as an admission that you have no intent to use any variant of UNIQUE in the United States.

In your answer to Interrogatory No. 7, you state that the trademark UUnique “was represented at CES 2015 organised by Brightstar in Las Vegas,” but you do not provide identification of “all advertising and promotional activities” and documents as queried. Your answer is non-responsive. Please provide an updated answer including advertising and promotional information relating to the CES consumer electronics show, along with any associated displays and/or documents.

In your answer to Interrogatory No. 10, you state that you “might use the expertise of certain persons that would be employed . . . by my business,” but you go on to state that “all final decision regarding the plans for use of the UUNIQUE mark will be taken by myself.” Your answer fails to properly respond as required. The interrogatory queries identification of “the persons employed by Applicant . . . who are most knowledgeable,” regarding use or plans of use of the UUNIQUE mark. Thus, your answer that “all final decision . . . will be taken by myself” is non-responsive. Please provide an updated answer identifying the persons who are most knowledgeable regarding the use or plans of use of the UUNIQUE mark in the United States.

In your answer to Interrogatory No. 11, you state that “no persons that I am acquainted with have specific knowledge on enforcement of trademark rights . . . in the United States.” However, the interrogatory refers to “persons . . . who are *most* knowledgeable” (emphasis added), and does not distinguish between specific, general or other knowledge. Thus, your answer is non-responsive. Please provide an updated answer identifying the persons with the most knowledge regarding the enforcement of trademark rights in the United States as required.

In your answer to Interrogatory No. 14, you state that you “made a survey on the trademarks” that “(i) contained the word ‘unique’ and (ii) have products in class [9].” However, of the sixteen marks you identify, eleven are under class 35. In fact, only four include goods under class 9. In addition, two of the marks, Nos. 6 and 7 on the list, were applied for after the Notice of Opposition was filed. Thus, Nos. 6 and 7 cannot be part of a survey conducted to determine whether the UUNIQUE mark was available when you applied for registration and as a result your answer is improper. Finally, the table you have provided fails to identify the source of the survey and the method used to conduct the survey. Your answer is also incomplete for at

Sanjay Agarwal  
January 7, 2016  
Page 3

least this reason. Please provide an updated answer identifying when the survey was performed, the source of the survey, and the method used to conduct the survey.

In your answer to Interrogatory No. 15, you state there “have been on third parties that cooperated in any way with me in relation to the above table.” The word “on” is unclear and renders your answer non-responsive. Please provide an updated answer describing 1) whether third parties cooperated the preparation of any poll, survey, consumer study, or other market research project, and if so, 2) identify the names of those third parties.

In your answer to Interrogatory No. 17, you state that the trademark UUnique “was represented at CES 2015 . . . in Las Vegas.” However, the interrogatory, in addition to including a query regarding “trade shows or conventions attended by Applicant or other persons associated with Applicant’s business(es) in the United States, includes a query to “state the activities of Applicant at such shows or conventions.” Thus, your answer is non-responsive because you fail to state activities of Applicant as required. A proper response will consider “Applicant” and “Applicant’s business(es)” as defined on page 3 of Opposer’s Discovery Requests. Please provide an updated answer describing your activities at the CES 2015 convention as required.

In your answer to Interrogatory No. 18, you state that “there are no specific documents.” However, the interrogatory states that “all documents” are to be identified. Thus, your answer is non-responsive. Please provide an updated answer identifying any and all documents, general, specific, or otherwise, relating to the origin of the UUNIQUE mark.

In your answer to Interrogatory No. 19, you state that “the correct phonetic pronunciation of UUNIQUE is ‘/jʊjʊ’ni:k/.” However, it is not clear what “/jʊjʊ’ni:k/” means. Thus, your answer is incomplete. Moreover, no source for “/jʊjʊ’ni:k/” is provided and no information is provided to attest to its correctness. Additionally, no information is provided as to the phonetic usage of “/jʊjʊ’ni:k/” by consumers, as queried. Please provide an updated answer with an explanation of what “/jʊjʊ’ni:k/” means, its source, the basis of accuracy for the source, and details of the phonetic usage by consumers.

In your answer to Interrogatory No. 20, you state that “all statements that have been in the document that you are referring to, are supported by all facts that I have been acquainted with at the time the document was executed.” However, the query seeks to identify facts, not merely that you were “acquainted” with the facts. Thus, your answer is non-responsive and void. As one example, paragraph 27 in Applicant’s answer to the Notice of Opposition asserts that “applicant’s goods neither move in similar trade channels, nor are they legally identical . . . to registrants’ goods.” Surely there must be facts to support this conclusory statement. As the interrogatory refers to paragraphs 11 through 34 inclusive, a proper answer would include facts for all contentions within these paragraphs. Please provide an updated answer with all supporting facts used to prepare your contentions outlined in paragraphs 11 through 34 of the Answer to the Notice of Opposition.

Sanjay Agarwal  
January 7, 2016  
Page 4

In your answer to Interrogatory No. 26, you state that you “have consulted a number of persons” but have not “identif[ied] each person” as required. Thus, your answer is non-responsive and fails to conform to the rules. Although you state “all final decisions were taken solely by myself,” the interrogatory queries as to “each person who was consulted to obtain information,” not who made final decisions. Please provide an updated answer identifying each person consulted to obtain information to respond to the interrogatories.

#### **Answers to Requests for Admission**

Your answer to Requests for Admission No. 1 fails to properly respond as required by Rule 36(a)(4). In your answer to Interrogatory No. 27 stating the basis for your denial, you state that your goods are not competitive with goods sold by our client. However, a cursory review of our client’s website reveals that your goods and those of our client are in fact competitive. For example, our client sells camera cases, a good listed on your application for registration. Please provide an updated answer in conformance with the rules.

Your answer to Request for Admission No. 2 is non-responsive. In your answer to Interrogatory No. 27 stating the basis for your denial, you state that the “products will be sold . . . to the general public” and as a result “no specific class of customers might be identified.” The goods listed in your application for registration must apply to a class of customers narrower than “the general public.” Please provide an answer based on the identification of a class of customers for your goods in conformance with the rules as required.

Your answer to Request No. 5 is non-responsive. In your answer to Interrogatory No. 27 stating the basis for your denial, you state that the goods in your application are different “than those, included in the opposer’s trademark registration.” However, the request refers to goods sold by Opposer, not goods limited to those included in Opposer’s registrations. In addition, there are goods in our client’s registrations that are the same as those in your application for registration. Please provide an updated answer based on a comparison of your goods with those sold by our client.

Your answer to Request No. 6 is non-responsive and void. Rule 36(a)(4) requires that a request either be admitted or “must specifically deny it or state in detail why the answering party cannot truthfully admit it or deny it.” Your answer does not admit, deny or provide an explanation as to why you cannot do either. The only possible interpretation of your answer is that it is an admission. Please provide an updated answer in conformance with the Rules admitting the allegation.

#### **Answers to Requests for Production**

The Requests for Production Nos. 1-27 require that you produce documents as described in each request. “Documents” for the purpose of the answers to each of the Requests for Production are as defined on page 2 of Opposer’s Discovery Requests. You are required under

Sanjay Agarwal  
January 7, 2016  
Page 5

the Rules to provide us with the requested documents and we expect to receive them shortly. Please provide us with the requested documents and other items and notify us of when we will be receiving such documents and other items.

Your answer to Request for Production No. 1 states that you have “not identified any documents in relation to the Interrogatories Nos. 1-27 to Applicant.” This is incorrect. Examples of documents in relation to the Interrogatories Nos. 1-27 include the following:

- Interrogatory No. 7: Your answer states that Uunique was represented at CES 2015. You are required to provide us with any documents relating to activities at CES 2015.
- Interrogatory No. 14: Your answer states that you “made a survey on the trademarks that have already been registered.” Surely the survey can be traced to a document other than the discovery answer itself.
- Interrogatory No. 16: Similar to Interrogatory No. 14, your answer states that you “made a survey on the trademarks that have already been registered.” Surely the survey can be traced to a document other than the discovery answer itself.
- Interrogatory No. 18: Refers to documents relating to the origin of UUNIQUE. You are required to produce such documents.
- Interrogatory No. 19: Your answer fails to demonstrate why “/juju'ni:k/” is the correct phonetic pronunciation of UUNIQUE. Please provide supporting documents to make the necessary showing.
- Interrogatory No. 20: Your answer fails to include any documents in support of known facts for Applicant’s contentions made in the Answer to Notice of Opposition. Please provide documents that form the factual basis for your allegations in the Answer to Notice of Opposition.
- Interrogatory No. 27: Queries as to the identification of all facts and documents and other evidence if a request is denied. You have denied several of the requests, therefore documents must be produced.

As in the examples above, you must provide documents and other information as requested for all Requests for Production. Please update your answer with documents as required.

Your answer to Request for Production No. 6 states that you “have no specific plans related to the elements of [your] prospective business in the United States” but your answer to Interrogatory No. 7 states that the trademark “UUnique was represented at CES 2015 organised

Sanjay Agarwal  
January 7, 2016  
Page 6

by Brightstar in Las Vegas.” Thus, your answer is incomplete because Brightstar is a distributor of goods. Please provide “documents as will permit the identification of . . . all present, proposed or contemplated distributors and/or licensees offering goods or services in the United States under or by reference to Applicant’s UUNIQUE mark” as required.

In your answer to Request for Production No. 7, you state that UUNIQUE was represented at CES 2015, a consumer electronics show. By virtue of this attendance, there must be specimens or samples of advertising, commercial material, brochures, photos, product description materials and/or other literature. Thus, your answer is non-responsive. Please update your answer with representative specimens or samples as required.

In your answer to Request for Production No. 20, you state that you “have not identified any advertising or sales agents.” However, in your answer to Interrogatory No. 7, you state that UUNIQUE was represented at CES 2015 organized by Brightstar.” Thus, your answer is improper. A proper answer to the request would name Brightstar as a “firm, including but not limited to, advertising or sales agents, that have promoted . . . the sale of the Applicant’s goods or services in the United States.” Please update your answer to include documents that permit identification of all persons and firms as required by the request.

In your answer to Request for Production No. 22, you state that you “made a search on the trademarks that have already been registered,” but you do not provide the requested documents relating to the search. Please provide an updated answer including the requested documents.

In your answer to Request for Production No. 29, you fail to answer the question asked. You state that there are no “documents available publicly in the websites of the U.S. Patent and Trademark Office that are related to the application.” However, the request seeks documents that support your allegations in the Answer to Notice of Opposition. Please provide an updated answer with documents in support of your allegations as outlined in the Answer to Notice of Opposition.

Our client expects that you will promptly address the deficiencies outlined above, in accordance with your ongoing duty to supplement disclosures as required under Rule 26(e). Due to the time sensitive nature of this proceeding, our client expects to receive a written response to this letter by no later than **January 13, 2016**. If you require additional time to respond, we can file a motion with the TTAB to extend the pretrial disclosure deadline. However, if we do not hear from you by January 13th, 2016, our client will proceed to take action to remedy the deficiencies in your answers to Interrogatories, Requests for Admission and Requests for Production.



Sanjay Agarwal  
January 7, 2016  
Page 7

We look forward to your prompt reply. If you have any questions or wish to discuss this matter, please call.

Sincerely,

LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP

A handwritten signature in black ink, appearing to read 'D. Laine', written in a cursive style.

DANIEL P. LAINE

DPL/pm

# **EXHIBIT D**

**Mascenik, Pat**

---

**From:** Microsoft Outlook  
**To:** 'Sanjay Agarwal'  
**Sent:** Thursday, January 07, 2016 7:15 PM  
**Subject:** Relayed: TTAB Opposition No. 91220956: Applicant's Responses to Discovery Requests

**Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:**

'Sanjay Agarwal' (sanjay@aegis.uk.com)

Subject: TTAB Opposition No. 91220956: Applicant's Responses to Discovery Requests

# **EXHIBIT E**

## Mascenik, Pat

---

**From:** Sanjay Agarwal <sanjay@aegis.uk.com>  
**Sent:** Monday, January 11, 2016 12:09 PM  
**To:** Laine, Daniel P  
**Cc:** Sales, Bruce H; Litigation; zlatinzlatev@yahoo.com; Sumit Agarwal; Raj Bahl  
**Subject:** RE: TTAB Opposition No. 91220956: Applicant's Responses to Discovery Requests

Dear Mr Laine,

Thank you very much for your letter. With the present I would like to acknowledge its receipt and also to express my desire to assist you as much as I can in clarification of the facts concerning the pending opposition proceeding between me and your clients.

However you should note that you are not in a position to impose deadlines or in any other manner to define or direct the pending proceedings - this can be done only by the Board.

In order to express my willingness to resolve the pending factual questions related to this matter and although I am not in any manner obliged to do so by the Federal procedural law, I am going to answer to your last enquiry in due course.

Yours sincerely,

Sanjay Agarwal

**From:** Laine, Daniel P [<mailto:dlaine@lerner david.com>]  
**Sent:** 08 January 2016 00:15  
**To:** Sanjay Agarwal <[sanjay@aegis.uk.com](mailto:sanjay@aegis.uk.com)>  
**Cc:** Sales, Bruce H <[bsales@lerner david.com](mailto:bsales@lerner david.com)>; Litigation <[litigation@lerner david.com](mailto:litigation@lerner david.com)>  
**Subject:** TTAB Opposition No. 91220956: Applicant's Responses to Discovery Requests

Dear Mr. Agarwal,

Please see our letter, attached.

Best regards,

**Daniel P. Laine**  
Lerner, David, Littenberg, Krumholz & Mentlik, LLP  
600 South Avenue West  
Westfield, NJ 07090  
Phone: 908-518-6326  
[DLaine@lerner david.com](mailto:DLaine@lerner david.com)

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# **EXHIBIT F**

## Mascenik, Pat

---

**From:** Laine, Daniel P  
**Sent:** Thursday, January 14, 2016 6:28 PM  
**To:** Sanjay Agarwal (sanjay@aegis.uk.com)  
**Cc:** Sales, Bruce H; Litigation  
**Subject:** TTAB Opposition No. 91220956: Joint Stipulation  
**Attachments:** Opposition No 91220956 - Joint Stipulation to Extend Time.pdf

Dear Mr. Agarwal:

As we have not received proper and complete responses from you regarding our requests for discovery, as outlined in our letter of January 7, 2016, we now ask whether you will agree to consent to resetting the dates in the scheduling order. We propose extending all remaining dates by 60 days from the dates provided in the scheduling order of April 14, 2015. A copy of a joint stipulation to this effect is attached for your signature. Please respond with a signed copy of the joint stipulation if you agree.

Sincerely,

Daniel P. Laine  
Lerner, David, Littenberg, Krumholz & Mentlik, Ilp  
600 South Avenue West  
Westfield, NJ 07090  
Phone: 908-518-6326  
[DLaine@lernerdavid.com](mailto:DLaine@lernerdavid.com) <<mailto:DLaine@lernerdavid.com%20%0d>>

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This paper is being filed with the approval of counsel for Opposer.

UNIQUE PHOTO, INC.

SANJAY AGARWAL

By: \_\_\_\_\_

Daniel P. Laine  
LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, llp  
600 South Avenue West  
Westfield, NJ 07090-1497  
Tel.: 908.654.5000  
E-mail: dlaine@lerner david.com

By: \_\_\_\_\_

Sanjay Agarwal  
Aegis Vision Limited  
Boundary House, Boston Road  
London, UK W7 2QE  
Tel: +44.0.208.434.3501  
E-mail: sanjay@aegis.uk.com

# EXHIBIT G

**Mascenik, Pat**

---

**From:** Microsoft Outlook  
**To:** Sanjay Agarwal (sanjay@aegis.uk.com)  
**Sent:** Thursday, January 14, 2016 6:28 PM  
**Subject:** Relayed: TTAB Opposition No. 91220956: Joint Stipulation

**Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:**

Sanjay Agarwal (sanjay@aegis.uk.com) (sanjay@aegis.uk.com)

Subject: TTAB Opposition No. 91220956: Joint Stipulation

# EXHIBIT H

## Mascenik, Pat

---

**From:** Laine, Daniel P  
**Sent:** Thursday, January 14, 2016 6:36 PM  
**To:** Sanjay Agarwal (sanjay@aegis.uk.com)  
**Cc:** Sales, Bruce H; Litigation  
**Subject:** Letter regarding TTAB Opposition No. 91220956  
**Attachments:** Letter to Sanjay Agarwal 1-14-16.pdf

Please see attached sent on behalf of Bruce H. Sales, Esq.

Sincerely,

Daniel P. Laine  
Lerner, David, Littenberg, Krumholz & Mentlik, Ilp  
600 South Avenue West  
Westfield, NJ 07090  
Phone: 908-518-6326  
[DLaine@lerner david.com](mailto:DLaine@lerner david.com) <<mailto:DLaine@lerner david.com>%20%0d>

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Lerner David Littenberg  
Krumholz & Mentlik LLP  
600 South Avenue West  
Westfield, NJ 07090  
908 654 5000 main  
lernerdavid.com

**Bruce H. Sales**  
908.518.6311  
bsales@lernerdavid.com

January 14, 2016

**VIA E-MAIL** (sanjay@aegis.uk.com)

Sanjay Agarwal  
Aegis Vision Limited  
Boundary House, Boston Road  
London, UK W7 2QE

Re: UPHOTO 10.20-064  
Opposition No. 91220956

Dear Mr. Agarwal:

We note that you have obtained a registration in the United States for the mark UU (Reg. No. 4,766,488), forming part of the word "unique", in classes 9, 14, 18 and 25. We would like to present you with a proposal. If you (1) agree to expressly abandon Application Serial No. 79/153,014, (2) agree not to refile an application for registration with the United States Patent and Trademark Office, and (3) agree to refrain from any and all use of the UUNIQUE mark in the United States, now or in the future, Unique Photo, Inc. will, in return, withdraw the pending opposition and agree not to challenge your 4,766,488 registration for UU. Agreeing to these terms would save you the time, expense and effort required to continue pursuing the opposition. Please advise as to whether you agree to these terms.

Sincerely yours,  
LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP

BRUCE H. SALES

BHS:dlb

# **EXHIBIT I**

**Mascenik, Pat**

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**From:** Microsoft Outlook  
**To:** Sanjay Agarwal (sanjay@aegis.uk.com)  
**Sent:** Thursday, January 14, 2016 6:36 PM  
**Subject:** Relayed: Letter regarding TTAB Opposition No. 91220956

**Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:**

Sanjay Agarwal (sanjay@aegis.uk.com) (sanjay@aegis.uk.com)

Subject: Letter regarding TTAB Opposition No. 91220956

# **EXHIBIT J**

**Mascenik, Pat**

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**From:** Sanjay Agarwal <sanjay@aegis.uk.com>  
**Sent:** Monday, January 25, 2016 9:23 AM  
**To:** Laine, Daniel P; Sales, Bruce H  
**Cc:** Litigation; zlatinzlatev@yahoo.com; Raj Bahl; Sumit Agarwal  
**Subject:** TTAB Opposition No. 91220956: Answers to discovery request.  
**Attachments:** INTERROGATORIES.PDF

Dear Mr. Laine,

Please find attached my letter regarding the answers to discovery request.

Yours sincerely,

Sanjay Agarwal

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

UNIQUE PHOTO, INC., :  
 : Mark: UUNIQUE  
 :  
 Opposer, :  
 :  
 v. : Serial Number: 79/153,014  
 :  
 :  
 SANJAY AGARWAL, : Opposition No. 91220956  
 :  
 :  
 Applicant. :

Additional Response to Interrogatories, Requests for Admissions and Requests for Documents  
and Things

With regard to letter dated 7 January 2016, I would like to make the following clarifications and  
to reconfirm the answers that I provided during the discovery in the opposition proceeding quoted  
above.

Whereas the initial qualifications that I made are concerned, I would like to reassure you that I  
have made all possible efforts in order to provide full and comprehensive answers to all your  
interrogatories and requests for admissions and documents. Although the greater part of them  
have been too burdensome or not related to the facts of the case, I did not object to them in the

interest of providing as full and comprehensive information as possible that would lead to prompt and fair decision which we expect at the end of the proceedings. However in the cases where you are requesting me to provide opinion or any other form of interpretation of certain facts, you should be aware that such interpretations do not have binding effect upon me. They are not subject to the Federal Rules of Evidence as they do not represent facts of the case and therefore any other party might provide new ones with which the Board will not be obliged to conform. On the contrary, if any such interpretation is related to the applicable law, the Board is free to take any positions that considers suitable regardless of any party's opinion. Similar conclusion might be made in relation to other parts of your interrogatories and requests where you are seeking my opinion about future facts. I would like to remind you that the purport of the discovery proceeding is to ascertain and clarify past facts that are relevant to the case and therefore, for similar reasons, I am neither bound with such opinions nor they represent any form of contract between your client and myself and they can be changed at any time.

However, with regard to those replies that are related to past facts of the case, I am providing a verification at the end of this document.

My response to interrogatory No 5 should be interpreted with regards to your interrogatory where you are asking us to identify each and other trademarks, in addition to UUNIQUE, where I am planning to use or intend to use in the marketing of the goods or services in the United States which include any form of the word "unique." Therefore the fact that I am not planning to use the word 'unique' in other trademarks does in no way prevent me from registering the mark

UUNIQUE. Besides that, your interrogatory is irrelevant to the case as it the opposition is raised against a specific mark and you are not able to prevent me from registering any future marks, including those, containing the word 'unique'.

In interrogatory No 7 I am stating that the trademark Uunique was represented at CES 2015 organised by Brightstar in Las Vegas – one of the biggest consumer electronic shows in the world. However you cannot require that I provide any documents within the interrogatories – their scope and purpose is different. Should you wish to obtain such a result, you should use other procedural means. Further to that, I would like to note, that any such request is too burdensome and you have not provided any reasoning with regard to its relevance to the case.

In my answer to your interrogatory No 10 I am explaining in details how any decisions related to usage of UUNIQUE trademark in the United States will be taken. There are no persons that can be further identified, besides me, in relation to any such prospective plans. Further to that, your question is unclear and ambiguous and is not related to the facts that are relevant to the pending opposition proceeding. I also object against this interrogatory due to its vagueness as I am not in a position to establish resolute decision to any such question. It requires that I do some form of quantification of other people's knowledge on certain topic. If you would like me to do that, you should state the applicable methods on which such quantification might be feasible and the relevant conditions in which it is to be done. Also, you should note the scale on which the results of any such quantification is to be assessed. However, any such procedure, apart from being too burdensome and expensive, will not in any manner contribute to clarification of the facts of the

case where likelihood of confusion between two trademarks in disputed and third party's knowledge on other legal questions is in no way relevant to the case.

Similar observations might be made regarding my answer to interrogatory No 11. There is currently no other person, apart from myself, to be mentioned here. You should further note, that this interrogatory has no relation to the case at all and in no manner elucidates any of the facts of the pending opposition proceeding. I am entitled to registration of the trademark that I have applied for regardless of my knowledge on the applicable law on enforcement of trademarks. I also object against this interrogatory due to its vagueness as I am not in a position to establish resolute decision to any such question. It requires that I do some form of quantification of other people's knowledge on certain topic. If you would like me to do that, you should state the applicable methods on which such quantification might be feasible and the relevant conditions in which it is to be done. Also, you should note the scale on which the results of any such quantification is to be assessed. However, any such procedure, apart from being too burdensome and expensive, will not in any manner contribute to clarification of the facts of the case where likelihood of confusion between two trademarks in disputed and third party's knowledge on other legal questions is in no way relevant to the case.

In your comments to my answer to interrogatory No 14 you are making some legal conclusions with regard to the legal qualification of my answer. However, the purpose of the discovery proceedings is different. The list that I provided has been constantly renewed and its purpose was to discover any marks that have been registered after Unique Photo and the other marks

mentioned in your notice of opposition that contain the word 'unique' and that are registered in the same classes where I have applied for. The purpose of this survey is to show that the strength of Unique Photo mark is very low.

Regarding my response to interrogatory No 15, I can note that there have been no third parties that cooperated in any way with me in relation to the above table.

In my answer to interrogatory No 17 I am providing all information that is available to me. Therefore I do not understand the purpose of your additional query.

For similar to the above reasons, I have nothing more to add on the other interrogatories you are citing.

With regard to your comments on your requests for admission, I would note that this is not the proper stage of the proceedings where you can assert your legal argumentation of the case. Therefore I have nothing to add with regard to this part of the document.

Whereas the last part of your letter is considered, no documents are to be sent. This was explained in the relevant document that I sent you and should you wish to challenge this position, you should pursue other procedural steps. I would kindly remind you that it is not necessary that all facts that might be relevant to any case are contained in a written document or if such documents existed in the past, they exist as of a specific prospective date.

Dated: 25 January 2016

By: /Sanjay Agarwal/

Sanjay Agarwal

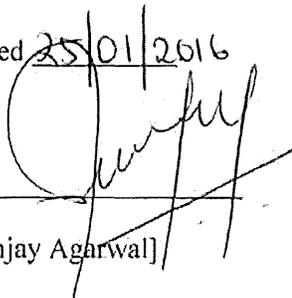
Telephone/facsimile: +44 - (0) 208 434 3501

Address: Aegis Vision Limited, Boundary House, Boston Road, London W7 2QE

### Verification

I, Sanjay Agarwal, have read the Interrogatories, Requests for Admissions and Requests for Documents and Things, propounded to me by the opposer, and my Response to those interrogatories, Requests for Admissions and Requests for Documents and Things. I am familiar with the contents of all. Based on my knowledge, the responses are true.

I declare under penalty of perjury under the applicable laws that the foregoing responses are true and correct.

Dated 25/01/2016  
  
[Sanjay Agarwal]

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25th day of January 2016, a true copy of the foregoing ANSWERS was served in the following manner: VIA overnight COURRIER at the following addresses:

DANIEL P LAINE  
LERNER DAVID LITTENBERG KRUMHOLZ & MENTLIK  
600 SOUTH AVENUE WEST  
WESTFIELD, NJ 07090  
UNITED STATES OF AMERICA

Unique Photo Inc.  
123 US Highway 46  
Fairfield, NJ 07004  
UNITED STATES OF AMERICA

VIA EMAIL at the following addresses:

dlaine@ldlkm.com, bsales@ldlkm.com, litigation@ldlkm.com

# **EXHIBIT K**

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

UNIQUE PHOTO, INC.,	: Serial No. 79/153014
	:
Opposer,	: Filed: 5/13/2014
	:
v.	: For: UUNIQUE
	:
SANJAY AGARWAL,	: Published: 2/3/2015
	:
Applicant.	: Opposition No. _____

\_\_\_\_\_ X

Commissioner for Trademarks

P.O. Box 1451

Alexandria, VA 22313-1451

**ANSWER TO NOTICE OF OPPOSITION**

Sanjay Agarwal (“Applicant”) answers Unique Photo, Inc.’s (“Opposer”) Notice of Opposition as follows:

1. The allegations of paragraph 1 related to ownership of the enlisted trademarks are admitted and no opinion because of lack of information might be formed on the allegations related to the usage of these marks.

2. The applicant has no information related to usage of the opposer's trademarks and these allegations are therefore denied. The allegations related to usage of the applicant's trademarks are denied. The applicant's trademark is not unknown to the consumers in the United States. The trademark UUnique was represented at CES 2015 organised by the applicant's US distributor Brightstar in Las Vegas – one of the biggest consumer electronic shows in the world. The applicant's trademark was also advertised in few leading American newspapers, including New York Times.
3. The allegations of paragraph 3 related to ownership of the enlisted trademarks are admitted and no opinion because of lack of information might be formed on the allegations related to the usage of these marks.
4. The Applicant has no information regarding the usage of the Opposer's trademarks and therefore the allegations of paragraph 4 are denied.
5. The allegations of paragraph 5 are denied. Apart from the usage as stated in paragraph 2 above, the Applicant's trademark has been registered in various jurisdictions, including European Union and the United Kingdom, where the trademark is well-known on the market with products sold under the Applicant's trade mark. These products are also sold in Japan, Middle East, South Africa and Australia, where UUnique trademark is used too.
6. The allegations of paragraph 6 are denied.
7. The allegations related to the list of products that the Applicant's trademark is intended to be sued for is admitted, the remaining allegations are denied.
8. The allegations of paragraph 8 are denied.
9. The allegations of paragraph 9 are denied.
10. The allegations of paragraph 10 are denied.

## AFFIRMATIVE DEFENCE

11. The trademark Unique (reproduced as ) was registered on 8 December 2009 in the United Kingdom and soon after that in the European Union. Since its registration it has been used actively in the commercial activities in Aegis Vision Limited, incorporated and registered in England and Wales with company number 05134589 whose registered office is at Gladstone House, 77-79 High Street, Egham, Surrey TW20 9HY, including advertising campaigns, public presentations, direct sales via a special website ([www.uunique.uk.com](http://www.uunique.uk.com)) and other internet retailers.
12. For this period of time there were no disputes with any other legal entities with regard to any possible conflicts related to usage of the Applicant's trademark. The Applicant's trademark Unique is part of the applicant's corporate identity and the applicant believes that its registration in the USA will be in best interest in the Applicant's potential customers therein.
13. The only common element of the Applicant's marks and the opposer's marks is the word 'unique'. This hypothetically can only lead to association of these marks, but the other elements that distinguish them prevent any similarity.
14. The mere association of two marks does not necessarily lead to similarity of the marks and therefore cannot in any cases cause 'confusion'. The mere 'association' of two marks by virtue of their 'analogous semantic content' is insufficient ground for concluding that there is 'similarity' or even 'confusion' between them.
15. 'Likelihood of association' is not an alternative to 'likelihood of confusion' but a subcategory of it. 'Association' of marks is not therefore an infringement or a bar to registration in the absence of confusion.

16. The fact that some of the marks that are enlisted in the opposition contain the word 'unique' does not in itself lead to confusion. Even though the marks contain the word 'unique', the opposer does not prove that this leads at least to association of the marks.
17. The availability of common word in two marks is not considered to be hindering condition for their registration as it is not leading to association of the marks or to further consequences like similarity. This can be best demonstrated by the fact that so many marks having the word 'unique' have already been registered in the United States and no grounds for specific treatment of the mark Uunique can be substantiated on this ground.
18. The Opposer's allegations of likelihood of confusion are not proved in any of its elements. The connotation of the Applicant's mark is opposite to the one that can be implied from the other marks: the presence of the first letter 'U' for the pronoun "you" in the mark specifies the uniqueness of the consumers rather than the uniqueness of the products. Therefore there is even no semantic similarity between the Applicant's mark and the marks in the opposition. Without any similarity of the marks no conclusion about likelihood of confusion can be drawn.
19. Furthermore, comparison of marks should be made from the standpoint of the average relevant consumer. Global appreciation of marks must be based on the overall impression given by them, bearing in mind their distinctive and dominant components. We think that the perception of marks in the mind of the average consumer of the relevant goods or services plays a decisive role in the global appreciation of the likelihood of confusion, since the average consumer normally perceives a mark as a whole and does not proceed to analyse its various elements.
20. The Applicant's mark in that respect has no similar elements in its global appreciation with the other marks enlisted in the opposition. Its graphical and semantic perception is

generally different than those of the other marks where even without knowledge of their additional elements like the relatedness of goods, imply different visual perception.

21. By the doctrine of the impression conveyed, where it is necessary to determine the similarity of an earlier mark and a later mark that comprises the earlier mark together with another integer such as the company name or house mark of the proprietor of the later sign, one should consider the overall impression conveyed by each of the latter two signs in order to ascertain whether the component shared by the two marks characterizes the latter composite mark to the extent that the other components are largely secondary to its overall impression.
22. Once this comparison is made, no likelihood of confusion will be said to exist where that common component merely contributes to the overall impression of the later sign, regardless of whether the common component still has an independent distinctive role in the composite sign. In this case the earlier mark (and thus the common component of both parties' marks) was the word UNIQUE. The doctrine dictates that, when UNIQUE is not the dominant element of the latter sign (UNIQUE PHOTO, UNIQUE TOTS etc.) the composite sign could not be said to be confusingly similar to the earlier mark.
23. The trademark 'UNIQUE' contains one single adjective which meaning can only be related to the products that are sold. Being an adjective, its function is just to provide additional meaning to the noun to which it is used. As in the trademark there is no noun, the nearest possible object to which this word can be associated are the products sold under the trademark.
24. In all other marks the word 'unique' appears just as an adjective whose function is to provide additional meaning to the noun which is bearing the main semantic burden and therefore defines the general connotation of the mark.

25. In both cases the distinctive and dominant component will be the noun and the adjective should be merely supplementing the main meaning. The Applicant's trademark contains the words "UUunique" which stands for "You are unique" and in that respect the adjective is related to the qualities of the recipient of the mark rather than the products that are offered.
26. Therefore we consider that the Applicant's trademark is not similar to any of the previously registered marks as there is no similarity in its appearance, sound, connotation, and commercial impression. With regard to such conclusion we are asking that the opposition should be dismissed.
27. The applicant's goods neither move in similar trade channels, nor they are legally identical or closely related to registrants' goods and therefore there is no likelihood of confusion as to the source of goods.
28. The fact that all products are in international class 9 does not in any case mean that the products are identical.
29. There is no registrant that offers similar aggregation of goods that we offer under the applied-for trade mark. Moreover, there is not even a single product overlap with some of the Opposer's marks. Therefore it cannot be concluded that the products are either moving in similar trade channels or there is any single element of identity between the Applicant's mark and the Opposer's marks.
30. The Opposer does not substantiate its claim about similarity of the products but merely mentions that its products are in international class 9 too. If it is assumed that in all cases where the products are merely within one international class there is similarity of the marks, this would lead to significant restriction of the principles of the free trade and market economy and would allow for registration of only one trademark per class. On the contrary, the requirement for identical or closely related to goods is applied only in

cases where (i) there is similarity in the marks and (ii) the aggregation of goods is identical. For none of the enlisted previously registered marks these conditions, even if taken separately, are met.

31. Commercial Impression is one of the four factors (along with appearance, sound and meaning that were discussed above) considered when comparing trademarks for similarities. Once a consumer has had an opportunity to encounter the trademark with its goods or services in the market place and it has observed the appearance of the mark, perhaps heard the sound of the mark, and considered the meaning of the mark, it now has developed a “commercial impression” of the mark along with the goods or services. This main image or idea that has developed is considered to be the commercial impression or consumer impression and it should weigh as part of the likelihood of confusion analysis. In that respect UUnique trademark is significantly distinctive compared to the trademarks that the opposer represents.
32. We think that the distinctiveness of the mark should be construed in its regular meaning. When considering the distinctive character of the earlier mark for the purposes of assessing the degree of protection against a similar mark to which it is entitled, we believe that the standard of distinctiveness is that employed in determining whether a trade mark has the capacity to identify the goods or services for which it is registered as coming from a single origin.
33. For the purpose of registration, the criterion is one of whether an applied-for sign has the necessary degree of distinctiveness to enable it to identify goods or services as coming from a single origin, not that of how much surplus distinctiveness there exists over the minimal level at which a sign becomes sufficiently distinctive to be registered. Every trade mark that is the basis upon which opposition or infringement proceedings

are brought is a mark which has already satisfied, at the point of registration, these criteria of distinctiveness.

34. From the overall visual and semantic appearance of the Applicant's registration mark there is no similarity to any of the Opposer's marks. Moreover, none of the Opposer's goods are identical to those that are to be offered under the Applicant's mark. Therefore we consider that the opposition should be quashed as there is no likelihood of confusion with the Applicant's trademark. The trademark Uunique was registered about 5 years ago in the United Kingdom and European Union and since then it has become part of the corporate identity of Aegis Vision Limited as it is invariably and actively used in its all commercial activities and it is widely associated with the products that it sells.

WHEREFORE, Applicant respectfully prays that the mark sought to be registered and that the opposition be dismissed.

Respectfully submitted on this the 30th day of April, 2015.

By: /Sanjay Agarwal/

Sanjay Agarwal

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 30th day of April, 2015, a true copy of the foregoing ANSWER and AFFIRMATIVE DEFENSES was served in the following manner, per the prior written agreement of counsel:

**VIA FIRST CLASS MAIL (Royal Mail First Class International Service, Tracked and Signed upon delivery) at the following addresses:**

DANIEL P LAINE

LERNER DAVID LITTENBERG KRUMHOLZ & MENTLIK

600 SOUTH AVENUE WEST

WESTFIELD, NJ 07090

**UNITED STATES OF AMERICA**

Unique Photo Inc.

123 US Highway 46

Fairfield, NJ 07004

**UNITED STATES OF AMERICA**

**VIA EMAIL at the following addresses:**

dlaine@ldlkm.com, bsales@ldlkm.com, litigation@ldlkm.com

**CERTIFICATE OF ELECTRONIC FILING**

The undersigned certifies that this submission (along with any paper referred to as being attached or enclosed) is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals (ESTTA) on this 30th day of April, 2015.

By:     /Sanjay Agarwal/    

SANJAY AGARWAL