

ESTTA Tracking number: **ESTTA725779**

Filing date: **02/09/2016**

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

Proceeding	91220956
Party	Defendant Sanjay Agarwal
Correspondence Address	SANJAY AGARWAL AEGIS VISION LIMITED BOSTON RD, BOUNDARY HOUSE LONDON W7 2QE, UNITED KINGDOM zlatinzlatev@yahoo.com
Submission	Opposition/Response to Motion
Filer's Name	Sanjay Agarwal
Filer's e-mail	zlatinzlatev@yahoo.com
Signature	/Sanjay Agarwal/
Date	02/09/2016
Attachments	RESPONSE TO THE MOTION FINAL.pdf(1769033 bytes)

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.	:	

I. Response to the Motion to Compel

INTRODUCTION

I have replied in full to all discovery requests of the opposer providing very detailed answers to all of their requests for admissions, requests for documents and things and interrogatories. All responses that I have provided are fully compliant with the procedural rules and reflect fully and comprehensively all facts of the case. The opposer's allegations are based on their unwillingness to accept that the facts that were ascertained during the discovery are not in their interests and will lead to rejection of their opposition and registration of my applied-for trademark UUNIQUE. Aiming to slow down the proceedings, the opposer is filing the present motion to compel without having any substantive or procedural grounds to do so.

All my answers are coherent and complete and although most of the discovery requests were not in any manner related to the facts of the case, I provided thorough and exhaustive answers as my interest is in the prompt resolution of this case where the opposer has clearly no substantive rights

that can be opposed to my registration. All facts that were testified are correct and precise. However, whereas some of the requests were related to my opinion with regard to the legal qualification of these facts or their other interpretation, I tried to provide answers, making one general remarks which was quoted deceptively and partially by the opposer.

I did not agree to delay the remaining dates of the trial since I believe that the facts of the case are represented in sufficient details so that the case can be successfully resolved. As the opposer comprehends that these facts are not in interest of the position that it holds in the proceeding, it is trying to slow it as much as possible and thus postpone the decision. The assertion that the opposer was trying to identify if my trademark can cause likelihood of confusion based on some interrogatories addressed to me is not correct. I have no other information related to the goods that I will be protecting with my trademark but the list of goods which the board already has. The opposer is not satisfied with this response as it is evident, that there are no common goods between those that I am trying to protect with my registration and those that were already registered with the trademarks of the opposer. A comparison between these groups of goods can easily be done on the basis of the materials that were already sent to the Board and it can even be seen, that the products are no within the same class of products.

As I have provided all information that I have regarding this case, I do not see any grounds for the opposer's motion and I would like to request that you reject it.

STATEMENT OF FACTS

The facts presented by the opposer are incomplete and exaggerated. I responded to the opposer's discovery requests fully and exhaustively, which included answers to many points which were too burdensome, unreasonable or unrelated to the facts of the case. You could note that the overall number of requests has been about eighty (80) whereas my requests were only six (6) and the opposer refused to answer to them. After I received another request from the opposer where some of the questions were modified or slightly changed, and where it was proposed that we change the dates of the case in order to allow for longer discovery period. Further to that, the opposer has been complaining of various deficiencies of the responses that I provided, none of which were grounded.

This second request has been clearly sent with regard to the worsened perspectives that the applicant has in the proceeding and the opposer's willingness to slow down, suspend or in any other way to extend the time of the present opposition.

Few examples of the opposer's second discovery requests may demonstrate the opposer's unwillingness to use the discovery for genuine clarification of the facts of the case, but only for postponement and complication of the proceedings. The opposer complained about my general remark regarding the interpretation of the facts of the case that they requested me to do. In my answer to them I reassured them that I have made all possible efforts in order to provide full and comprehensive answers to all their interrogatories and requests for admissions and documents. Although the greater part of them had been too burdensome or not related to the facts of the case, I had not objected 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 I added that in the cases where the opposer is requesting me to provide opinion or any other form of interpretation of certain facts (and not the facts themselves), they should be aware that such interpretations do not have binding effect upon me. My opinion was that it is in the sole discretion of the Board to make the relevant conclusions based on these facts and not myself. I also added that any legal interpretations, even if they were included in the discovery responses, should not be subject to the Federal Rules of Evidence as they do not represent facts of the respective case and therefore any other party might at the times provided by the procedural laws, to submit new legal interpretation of the case with which, at the end, the Board will not be obliged to conform. I further added that on the contrary, if any such interpretation were related to the applicable law, the Board is free to take any positions that considers suitable regardless of any party's legal opinion thereof.

I also added that similar conclusion might be made in relation to other parts of the opposer's interrogatories and requests for admissions where they were seeking my opinion about future facts. I advised them that the purport of the discovery proceeding is to ascertain and clarify past and present 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 the opposer's client and myself and they therefore can be changed at any time.

Whereas the correspondence between us is concerned, I replied to every e-mail to letter that I received by the opposer. Although the opposer is represented by few professional lawyers who claim to be specialists in the substantive and procedural laws regarding the opposition, I am participating on my own and therefore I am unable to answer to all their letters and e-mails instantaneously. However, I provided detailed answers to all of them within week or ten-day term which in my opinion is sufficiently prompt, especially whereas the volume of the materials that are discussed is taken into account.

The opposer's allegation that I did not respond to their letters of 14 January is not true. My response is attached to the present document. The opposer further claims that a settlement has been offered. This is also not true, as the opposer during the whole course of the proceedings has never sought to reach any settlement of the case. Whereas the settlement of the case would suppose mutual compromises made by both sides, the opposer's proposal was that I abandon the registration and never use the word 'unique' in the course of the prospective business in the United States.

The last offer by the opposer seems to be based on the assumption that the opposer has exclusive rights on the word UNIQUQ and any other words that simply contain the letter U for all possible products and services that might exist. Based on such views, the opposer suggested that if I abandon the application for UUNIQUE trademark, it will not challenge another trademark that I already registered in the United States – UU. However, the mark that I have already registered, neither contains the word UNIQUE nor includes any of the products protected by the opposer's trademark. On contrary, our proposals for settlement were reasonable and fair, taking into account the existing substantive law on trademark rights and the interests of both parties. However, the opposer has always been completely irresponsive to such offers, insisting that the only solution for a settlement will be if I abandon my application and do not try to sell any of those products that I am currently selling in the United Kingdom under UUNIQUE trademark regardless of the fact that the opposer has no common or any other rights in relation to those products.

ARGUMENT

The rule which is quoted by the opposer and on which it bases its motion to compel relates to limited number of cases which common element is that the other party does not provide responses to the discovery requests. As it has been explained above, this is not the case in the present opposition as I have provided full answers to all requests. Therefore it might be concluded that the opposer has no procedural right in the present opposition as the conditions for motion to compel as stated in 37 C.P.R. § 2.120(e), are not satisfied.

Contrary to the opposer's emotional qualifications regarding my responses, it might be seen that I have provided answers to all of the requests meticulously and precisely. The opposer is not happy with my answers not because they are not available. On the contrary, my answers clearly and undoubtedly demonstrate that there are absolutely no conditions for likelihood of confusion. For example, comparison between the products leads to the conclusion that there are no common or close products, or even no products within the same class, between my mark and the opposer's marks. Further to that I was obliged to provide information about my prospective distributors in the United States. This is not possible as I have never sold any products in the United States and I have no distributor there that is attempting to sell any such products. The opposer claims that this information will show that the products will be sold through similar channels and this could cause likelihood of confusion. This conclusion is wrong again as, apart from the fact that we do not produce similar products, the requested information cannot lead to a conclusion that similar or identical trade channels were to be used. At this point it might be further added that it is not only within the registration of the opposer's trademarks where no similar products can be found – I have made a thorough research of the opposer's website where they sell all their products and there were no similar products to those that I am trying to protect with my trademark that bear the opposer's trademark.

Thus it can be concluded that the opposer is not satisfied with my responses as they very clearly and unquestionably demonstrate that there is no likelihood of confusion between my mark UUNIQUE and their marks enlisted in the notice of opposition. However this does not entitle the opposer to the motion to compel and therefore I would like to request you to reject it.

1. Alleged Disregard of Discovery Process

The opposer claims that I did not observe the procedural rules that regulate the discovery proceedings. The main argument is that I have made one general qualification that relates only to cases when I am requested to provide my interpretation of the facts or to make a legal conclusion based on certain facts that the opposer supposedly wrongly believes that exist. However, as I have mentioned above, my remark is made with regard to cases where the opposer is requesting me to provide opinion or any other form of interpretation of certain facts (and not the facts themselves), then the opposer should be aware that such interpretations do not have binding effect upon me. My opinion was that it were not myself, but it is in the sole discretion of the Board to make the relevant conclusions based on these facts. I also added that any legal interpretations, even if they were included in the discovery responses, should not be subject to the Federal Rules of Evidence as they do not represent facts of the respective case and therefore any other party might at the times provided by the procedural laws, to submit new legal interpretation of the case with which, at the end, the Board will not be obliged to conform. I further added that on the contrary, if any such interpretation were related to the applicable law, the Board is free to take any positions that considers suitable regardless of any party's legal opinion thereof.

I have provided certification that all facts that I described in my responses, to the best of my knowledge, information and belief are complete and correct. Therefore I believe that there is nothing to be added, amended or supplemented in any of the answers that I provided. They clarify the factual status of the case sufficiently and there are no procedural grounds for the motion that was submitted by the applicant.

The opposer states that I rejected to rectify the deficiencies in my respond and did not do that in a timely manner. Indeed I was not in an obligation to respond to the opposer's additional requests as those that I already sent were in compliance with the relevant procedural rules. However, as my intention in this case has always been to assist to the other party and the Board so that all relevant facts are represented clearly and undoubtedly, I sent a second response in a timely manner. The expressions 'in due course' and 'in timely manner' have identical meaning and therefore the

objections that the opposer raises against the fact that I used the former expression can be qualified as otiose or place by mistake in the motion to compel.

2. General Objections against the Discovery Requests

I did not provide initially any general objections against the opposer's as I genuinely intended to provide answers to all questions of the case. Should any of the opposer's items were not in conformity with the procedural law, I do not consider this as a reason that might in any manner affect in negative perspective my position on the case. I am confident that the facts of the case, whereas my part is considered, are relatively plain and simple and I would not mind to represent them before the Board in their entirety and completeness. However, it seems that the opposer tries to hold me responsible for the lack of documents that were never produced by myself or of which I never had any information. In that respect, the opposer's motion to compel can never be successful as no procedural step can bring into the reality a non-existent document.

3. Allegations of Faulty Verification

The verification that I provided is in compliance with the procedural rules. However, I am ready to reproduce it once more if this is to be found appropriate.

4. Comments on some of my specific answers

The opposer's comments and requests for amendments of my responses, apart from having the above deficiencies, were not specific at all. The general impression is that they were sent simply to complicate and delay the opposition. Few examples can clearly represent this.

The opposer criticised my respond to interrogatory No 5 stating that it must have been untrue. Such conclusion can in no manner be inferred from the information that is available in the case and a closer look at the questions shows that the opposer asks for information related to any "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 any form of the word "unique." It is not

clear why the opposer thinks that this answer is not true, whereas indeed I am not planning to use the word “unique” in any other trademark. Further to that, it is not clear why this information is relevant to the case. The opposer does not have any specific intellectual rights over the word ‘unique’ and as it can be seen, thousands other trademarks that are already registered in the United States contain this word. Besides that, the opposition is raised against a specific mark and the opposer is not able to prevent me from registering any future marks, including those, containing the word ‘unique’ in the present proceedings.

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, the opposer’s question is unclear and ambiguous and is not related to the facts that are relevant to the pending opposition proceeding. I also objected against this interrogatory due to its vagueness as I am not in a position to establish resolute decision to any such question. The opposer requires that I do some form of quantification of other people’s knowledge on certain topic. If the opposer would like me to do that, it should state the applicable methods on which such quantification might be feasible and the relevant conditions in which it is to be done. Also, the opposer 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 such legal questions is in no way relevant to the case.

In the opposer’s comments to my answer to interrogatory No 14 the opposer is 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 initially to identify all marks that are similar to the one that I have applied for registration and which is subject to the present opposition. Whereas the distinctive word of the mark and with regard to which this opposition is raised, it can be further used for demonstration of the strength of the opposer’s marks mentioned in the notice of opposition that contain the word ‘unique’ and that are registered in the same classes where I have applied for. I do not keep any additional information of the survey which has been made using the electronic search system of

the United States Patent and Trademark Office (USPTO). I have made the search trying to provide a list of all trademarks that included the words 'unique' and which were registered in the classes that I applied for. I keep in the results of the search in a simple electronic document whose previous versions were not stored at all. For this reason I can only present the last version which also includes marks that were registered after my application. The survey showed that there are many other marks which contain the word 'unique' with products that are completely identical to those that I applied for, but which were not opposed by the opposer and thus demonstrating that the strength of Unique Photo mark is very low. However this result was not satisfactory for the opposer, but it in no manner affects the importance or the relevance of my answer to this interrogatory and there is no further answer that can be provided. Therefore the opposer's conclusion that I completely failed to honour my discovery obligation is entirely wrong. On the contrary, I provided the most detailed and up to date survey that not only demonstrates my constant efforts to evaluate fairly and objectively the possibilities for likelihood of confusion regarding the mark that I have applied for, but also my willingness to cooperate into resolving the pending opposition.

I have provided all information related to the trade show mentioned in the opposer's motion. There are no printed or any other materials that are available in relation to my participation there. I did not have any meetings with potential distributors.

The onus of proof that there is a likelihood of confusion is for the opposer. Therefore its assertion that I have to provide evidence related to the trade channels that I am going to use is not in line with the procedural rules. I am not obliged to have any preliminary information about my prospective trade channels prior registration of my trademark.

5. Alleged silence with regard to the Extension of Time

As I have explained herein above, it is not myself, but the opposer who tries to hinder and delay the discovery process and the whole opposition proceeding. The offers of the opposer for extension of the time have not been accepted as they do not purport to facilitate the discovery or the opposition in general. I have replied to all of the opposer's e-mails and letters timely, but clearly refused to

accept extension of the times of the proceeding or to abandon my application for registration of UUNIQUE trademark, as the opposer proposed.

The opposer has never made a good-faith effort to resolve the alleged issues presented in the motion prior seeking relief from the Board. I have provided extensive responses to all discovery requests, including the additional responses that were sent on 25 January 2016. I have no further information to add or any documents to provide that can in any matter be related to the proceeding.

Therefore I request the Board to reject the Motion.

II. Facts of the Case

In the case has been established that there are no common or related products to those that I have included in my application for registration of UUNIQUE trademark and the opposer's trademark. Further to that, the opposer states that they sell products that are identical with those in my application, but these products neither bear the opposer's trademark nor are they included in their registrations. The opposer sells thousands of products of various types through their website which do not bear any of the trademarks owned by the opposer and only two of these products are identical to those included in my application. However, there are hundreds of trademarks in the United States that contain the word UNIQUE and that sell products that are much closely related to those sold by the opposer or protected by the trademarks that the opposer enlisted in its notice of opposition.

III. Our Attempts to Resolve the Case Amicably

I have made few attempts to resolve the case amicably, but the intention of the opposer expressed during the telephone conversation with the Board that such settlement is possible, was false. The opposer in all correspondence stated that they cannot make any compromise regarding the case and the only option for amicable solution is if I abandon the registration or if I register the mark in different classes (in which I am not interested at all). Enclosed are few e-mails that we have exchanged with the opposer. I have even engaged a United States Attorney to negotiate fair and reasonable terms for such settlement, but the requirements of the opposer seemed not be reasonable

and taking into consideration the applicable laws of the United States. Attached is the later that has been sent by the attorney that attempted to assist into reaching a reasonable settlement with the opposer.

The later offers for settlement of the opposer were ridiculous and threatening. I tried to propose reasonable and fair terms which would account for interests of the both parties. In return, the opposer suggested that I should abandon my application and they will not challenge a trademark that I have already registered in the US, although they had no legal grounds for challenging of this mark. All of the opposer's proposals for settlement aimed either to delay the procedure or to threaten me so that I cancel my application for registration of UUNIQUE trademark in the United States.

IV. Conclusion

There are neither procedural nor substantive grounds for the motion to compel. I have provided two sets of detailed answers to the discovery requests of the opposer, whose only aims in the proceedings is to delay them in order to evade the final decision. I have made many attempts for amicable resolution of the case, but the opposer remained unresponsive to them. Therefore I would like to request that the Board rejects the motion to compel filed by the opposer.

Dated 9 February 2016.

/Sanjay Agarwal/

[Sanjay Agarwal]

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 9th day of February 2016, a true copy of the foregoing RESPONSE 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

From: "Shimomura, Kimberly" <kshimomura@hselaw.com>
To: ZLATIN ZLATEV <zlatinzlatev@yahoo.com>
Cc: Sanjay Agarwal <sanjay@aegis.uk.com>; Sumit Agarwal <Sumit@aegis.uk.com>; Raj Bahl <raj@aegis.uk.com>
Sent: Tuesday, August 11, 2015 7:24 PM
Subject: RE: Engagement Letter [HSELAW-WORKSITE.FID652891]

Dear Zlatin,

I spoke with counsel for Unique Photo today. As you know, the attorney is Daniel Laine, who graduated from law school in 2014 and was just admitted to practice in 2015. He is not experienced in law and certainly not in this field.

I asked him if his settlement proposal to you was his client's actual position or if he was just taking advantage of a pro se litigant. He said that it was his client's legitimate position and therefore I responded to his proposal as follows:

- His settlement request that we abandon Class 14 is inappropriate since they didn't even oppose that class. Even if Unique Photo won this opposition, it wouldn't be able to stop us from registering the Class 14 goods;
- His proposal that we agree not to sell in the US or import or export to/from the US any products in classes 9 or 14 was absurd since it was not limited to any specific trademark, but simply a broad restraint on trade. He would never be entitled to this type of relief in this action or any other action in the US;
- His request that we not use UNIQUE alone could be incorporated into a broader settlement agreement.

I advised him that his position was weak due to the dilution in the field of UNIQUE marks and, under the law, a retailer is not permitted to stop use of its mark on all goods that may pass through the retailer.

I said that if he is serious about settlement, I would advise Sanjay to resolve this matter by removing "camera cases" from the description of the Class 9 goods, but right now, I don't see any reason to offer more toward a resolution. He advised that he isn't permitted to make any decisions in this matter and must speak to the partner in charge. He said that he would have a response to me in one week. If I haven't heard from him before August 18, I will follow up with him.

Please let me know if you have any questions.

Best,
Kim



Kimberly I. Shimomura
Harter Secrest & Emery LLP, Attorneys and Counselors
1600 Bausch & Lomb Place, Rochester, NY 14604-2711
Firm 585.232.6500 Direct 585.231.1382
Fax 585.232.2152 KShimomura@hselaw.com
[vCard](#)
www.hselaw.com

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 & 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 respond 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 _____.

[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

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. :

Requests for Admissions

I. I would like to request you once more, pursuant to rule 36 of the Federal Rules of Civil Procedure, that you, acting on behalf of the Opposer (herein sometimes referred to as 'you' which is to be understood as a reference to the bearer of the substantive rights associated with the mark Unique Photo and the other marks cited in the notice of opposition in the aforementioned opposition), make the admissions enlisted below, under oath, and serve the answer on the Applicant within thirty days after service of this document.

You have made some general objections against the requests for admission that I sent you in November 2015. However, none of them are grounded and therefore you need to provide responds to the requests for admission as they are described in the initial document and explained in details herein under.

You are implying that you are experiencing certain difficulties with regard to understanding the meaning of the words used in the requests for admissions that I sent you and that you are experiencing some general problems of semantic and cognitive nature. In this respect I might advise you that the words that are used have the general meaning as it is described in the Oxford English Dictionary (third electronic edition) and as the official language of the Board is English, your excuse that you do not understand this language is not acceptable and if you do not respond, it is assumed that you have admitted the facts with regards to which the requests have been made. You also state that the requests for admission imposed burdens and obligations that were greater than or different from those authorised under the applicable procedural rules. However, I would like to remind you that you are obliged to respond to all requests even those which might lead to results that are not favourable to your position in the proceeding.

You further claim that I am searching for information that is not relevant to the subject matter or is not reasonably calculated to lead to this discovery of admissible evidence. I believe that you put this objection by mistake as it is not relevant to the requests for admission sent by me. The requests sent by me seek to clarify solely the scope of the products that are to be protected by the registration of Unique Photo mark and the other trademark cited in the notice of opposition. This is one of the central questions of the proceeding and therefore your qualification that it is not relevant to the oppositions is surprising.

You also object stating that the information that has been sought is vexatious, burdensome or expensive to obtain. Again, I assume that this general objection has been put in your response by error as it is not relevant to my request. Information on what products you offer or seek to protect with the registration of Unique Photo mark and the other trademarks cited in the notice of opposition is neither expensive nor burdensome to be provided. Whereas the non-pecuniary

dimensions of my requests are considered, I assume that you might feel vexation because the facts which are to be ascertained within the present stage of the proceedings will lead to the conclusion that there are no common products between the mark which registration you are opposing and the Unique Photo mark and the other trademark cited in the notice of opposition and no likelihood of confusion is possible. However such excuse is not admissible and you are obliged to participate in the proceedings even if you find that it will not be resolved in your favour and therefore you must admit even those facts that will not support the opposition filed by you.

II. For your convenience I will send you the requests for admission with further explanations once more. You are expected to respond to them as specified above.

1. Admit that there are no common products between those (i) that are included in my application for registration of the mark UUnique and (ii) which are included in your registered trademarks that you quoted in your notice of opposition. This request for admission is related only to the products that are enlisted in the registration of the trademark with the USPTO - United States Patent and Trademark Office and does not include any other products that you might had wished to include in the registration, that had previously been there, that you are planning to include in any future amendments of the registration of these trademarks. If you deny this request for admission, state the products that are common between the above application (in point i above) and registrations (in point ii above) and explain why the United States Patent and Trademark Office database shows that there are no such common products between those included in the application for registration of UUnique trademark and any of the trademarks that are described as owned by the opposer in the present procedure.

2. Admit that the opposer does not sell any products that respond simultaneously to the following conditions (i) the products have or bear or contain any of the trademarks that are described as owned by the opposer in the present procedure with the notice of opposition and (ii) the products are identical with any of the products included in my application for registration which is opposed by you in the present opposition proceedings.

Dated: 19 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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of January 2016, a true copy of the foregoing REQUESTS FOR ADMISSIONS OF THE APPLICANT 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

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. :

INTERROGATORIES TO THE APPLICANT – REQUEST FOR RESPONSE

I. I would like to request you once more, pursuant to rule 36 of the Federal Rules of Civil Procedure, that you, acting on behalf of the Opposer (herein sometimes referred to as ‘you’ which is to be understood as a reference to the bearer of the substantive rights associated with the mark Unique Photo and the other marks cited in the notice of opposition in the aforementioned opposition), provide answers to the interrogatories enlisted below, under oath, and serve them on the Applicant within thirty days after service of this document.

You have made some general objections against the interrogatories that I sent you in November 2015. However, none of them are grounded and therefore you need to provide responds to the interrogatories as they are described in the initial document and explained in details herein under.

You are implying that you are experiencing certain difficulties with regard to understanding the meaning of the words used in the interrogatories that I sent you and that you are further experiencing some general problems of semantic and cognitive nature. In this respect I might advise you that the words that are used have the general meaning as it is described in the Oxford English Dictionary (third electronic edition) and as the official language of the Board is English, your excuse that you do not understand this language is not acceptable and if you do not respond, the consequences of failure to make disclosures or to cooperate in discovery will be applied as described in rule 37 of the Federal Rules of Civil Procedure.

You also state that the requests for admission imposed burdens and obligations that were greater than or different from those authorised under the applicable procedural rules. However, I would like to remind you that you are obliged to respond to all interrogatories even in cases that your responses might lead to confirmation of facts that are not favourable to your position in the proceeding.

You further claim that I am searching for information that is not relevant to the subject matter or is not reasonably calculated to lead to this discovery of admissible evidence. I believe that you put this objection by mistake as it is not relevant to the interrogatories sent by me. The interrogatories sent by me seek to clarify solely the scope of the products that are to be protected by the registration of Unique Photo mark and the other trademark cited in the notice of opposition. This is one of the central questions of the proceeding and therefore your qualification that it is not relevant to the oppositions is surprising.

You also object stating that the information that has been sought is vexatious, burdensome or expensive to obtain. Again, I assume that this general objection has been put in your response

by error as it is not relevant to my interrogatories. Information on what products you offer or seek to protect with the registration of Unique Photo mark and the other trademarks cited in the notice of opposition is neither expensive nor burdensome to be provided. Whereas the non-pecuniary dimensions of my interrogatories are considered, I assume that you might feel vexation because the facts which are to be ascertained within the present stage of the proceedings will lead to the conclusion that there are no common products between the mark which registration you are opposing on one side and the Unique Photo mark and the other trademark cited in the notice of opposition on the other and no likelihood of confusion is possible. However such excuse is not admissible and you are obliged to participate in the proceedings even if you find that it will not be resolved in your favour and therefore you must respond to all interrogatories even in cases when the facts that you are going to provide will not support the opposition filed by you.

II. For your convenience I will send you the requests for admission with further explanations once more. You are expected to respond to them as specified above.

1. Does the opposer base its opposition on the rights deriving from the registration of its trademarks with the United States Patent and Trademark office or the opposer claims that it has some common rights, based on the actual use of the trademarks cited in its notice of opposition?
2. Does the opposer sell any goods that: (i) bear any of the trademarks mentioned in the notice of opposition; and (ii) are identical to any of the products that are included in my application for registration of UUnique trademark? If the opposer chooses to answer, that the goods sold by the opposer are identical with those that are included in my application for registration of UUnique trademark, then does these products bear the Opposer's trademark or they are bearing third party's trademarks?

3. If the opposer claims to sell identical goods with those that I am trying to protect with the registration of UUnique trademark, can the opposer provide an exhaustive list of the common goods that are sold by the opposer and that are included in my application for the registration of UUnique trademark and to identify all trademarks that these products bear?

4. How many goods does the opposer sell through its website? Of all these products, how many are identical with those that I am attempting to protect with the application for registration of UUnique trademark? How many of all these common products bear any of the trademark that the opposer mentions in its notice of opposition?

Dated: 19 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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of January 2016, a true copy of the foregoing INTERROGATORIS OF THE APPLICANT 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