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

Proceeding	92054050
Party	Defendant Unimundo Corp
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8 Registrant UNIMUNDO CORPORATION by and through
9 MARCUS FONTAIN, President and CEO, in pro se

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

12 UNIMUNDO CORPORATION,
13 a Florida Corporation,

14 Registrant,

15 vs.

16 UNIVISION COMMUNICATIONS, INC., a
17 California Corporation,

18 Petitioner.

) **Cancellations No. 92054050**
) **Registration No. 3889485**
)

) **UNIMUNDO’S OPPOSITION AND**
) **TRAVERSE TO UNIVISION’S RESPONSE**
) **TO UNIMUNDO’S FURTHER**
) **OPPOSITION; AND RENEWED MOTION**
) **TO DISMISS UNIVISION’S PETITION TO**
) **CANCEL THE UNIMUNDO MARK FOR**
) **FAILURE TO STATE A CLAIM**
)

19
20 COMES NOW Registrant UNIMUNDO CORPORATION by and through MARCUS FONTAIN,
21 President and CEO, in pro se and files this **UNIMUNDO’S OPPOSITION AND TRAVERSE TO**
22 **UNIVISION’S RESPONSE TO UNIMUNDO’S FURTHER OPPOSITION; AND RENEWED**
23 **MOTION TO DISMISS UNIVISION’S PETITION TO CANCEL THE UNIMUNDO MARK**
24 **FOR FAILURE TO STATE A CLAIM.**

25 **I. INTRODUCTION**

26 The latest “RESPONSE TO UNIMUNDO’S FURTHER OPPOSITION” by Univision continues to
27 be nothing but fodder. The USPTO Trademark Trial and Appeal Board (“The Board”) should take
28 notice Univision purposely forgets the real issue is that Univision **does not** have stranding to have filed
a complaint for the cancellation of the UNIMUNDO Trademark name, in the first place.

1 Univision in bad faith and a deliberate attempt to conceal their true intentions are seeking to kick
2 Unimundo out of the box and to bury the real issue of not having any standing by citing irrelevant cases
3 and superfluous Sections of the CFR's none of which go to the heart of the matter, that Univision filed a
4 baseless complaint in bad faith and with malice, just because Univision and its attorneys believe
5 themselves to be Spanish Goliath. Univision has no standing here.

6 **II. UNIVISION WAS SERVED BY U.S. FIRST CLASS MAIL POSTAGE PREPAID**

7 The attorney for Univision, in a further effort to taint these proceedings and to cast doubt over
8 UNIMUNDO's credibility has come and not just misrepresented he told a pack of lies to the Board by
9 deliberately concealing that Univision in fact was [also] served with a hard copy of the papers via first
10 class mail, not just by e-mail. The courtesy-copy sent via e-mail was a well-intended gesture by
11 UNIMUNDO. This false representation by the attorney for Univision further proves that Univision is up
12 to no good. With Univision, no good deed will go unpunished!!

13 The Proof of Service in no uncertain terms reads: "***I MARCUS FONTAIN, on this date have***
14 ***caused to be served upon Petitioner by depositing one copy in the United States Mail, First Class***
15 ***Mail, postage prepaid, and by also sending courtesy copy to Petitioner via e-mail to***
16 ***ehourizadeh@mwe.com***". The attorney for Univision instead chose to tell a blatant lie! UNIMUNDO in
17 full compliance with the Board's order of July 13, 2011, DID serve Univision by fist class mail with a
18 hard copy of the papers and the attorney for Univision knows it all too well. However, on this issue the
19 attorney's for Univision should have included a sworn declaration under the penalty of perjury, which he
20 deliberately failed to include for good reason.

21 **III. UNIVISION HAD A THIRD CHANCE TO CLEARLY MAKE ITS CLAIM**

22 Now, having been afforded a third chance at taking a bite of the apple, Univision instead of coming
23 clean with their real claim of dilution and confusion chose to misrepresent but still made no effort to
24 prove or to even try to convince the Board with clear and convincing evidence why Univision has any
25 standing to argue that the UNIMUNDO Mark should be cancelled. Univision's filings are vexatious and
26 baseless and the complaint should be dismissed with prejudice. The Board also should refuse to expand
27 trademark protection as requested by Univision because clearly Univision has no standing to file any
28 complaints against UNIMUNDO. The arguments by Univision simply do not cut mustard!

Furthermore, even after having a third bite at the apple, Univision again fell short by making no
attempt to prove why UNIMUNDO is causing the dilution of the name Univision abd again failed to

1 argue why Univision's should prevail. Univision again failed to demonstrate the likelihood of success
2 despite their delusional and preposterous claims of confusion and dilution of the name Univision by
3 UNIMUNDO or by the "U" logo design and color of UNIMUNDO.

4 **IV. ANY REFERENCE TO "TELEMUNDO" SHOULD ORDERED STRICKEN**

5 On the issue of "*Telemundo*" the argument was thoroughly briefed to the Board since the inception
6 of this case by UNIMUNDO in its "Motion to Dismiss" the Univision complaint, therefore, it is
7 outrageous for Univision to now make the claim or to even allude that UNIMUNDO has raised the issue
8 for the first time in these proceedings and that it was never mentioned by UNIMUNDO.

9 That is not the case here. This off track contention by Univision is not just wrong it is preposterous
10 and more of the same malicious intent by Univision. The misuse of the "*Telemundo*" name and false
11 argument by Univision regarding "*Telemundo*" has been much a part of this case since its inception,
12 including in correspondence with Univision's attorney. See Univision's Petition to Cancel and
13 Unimundo's Motion to Dismiss, Exhibit A.

14 To further demonstrate to the Board, Univision's ill intentions and the vexatious nature of
15 Univision, they are not sure if they are dealing with the issues of "*Telefutura*" or "*Telemundo*." The
16 attorney for Univision confused "*Telemundo*" at page 2 line 3 of the response, with "*Telefutura*." Be
17 that as it may, any use of the name "*Telemundo*" in these proceedings is legally flawed and should be
18 ordered stricken and barred from future use.

19 UNIMUNDO prays alternatively, the Board issue an Order directing Univision to strike and to
20 cease and desist from any further use of the name "*Telemundo*" because Univision is **not**
21 "*Telemundo*," Univision does not own "*Telemundo*" nor are the Attorneys for Univision representing
22 "*Telemundo*." "*Telemundo*" is neither a complainant here nor a part of this litigation.

23 Univision has made makes the false and misleading allegation that somehow UNIMUNDO used
24 words from Univision and "*Telemundo*" and put them together to create the mark UNIMUNDO to
25 confuse the public by creating "blurring and tarnishment." That is completely false!

26 **V. UNIVISION ALSO HAS NO STANDING FOR FAILURE TO OBJECT**

27 Univision should not be allowed to profit from their failure to object to the UNIMUNDO
28 Trademark Registration. Univision had a chance to object to the issuance of the UNIMUNDO
Trademark but deliberately failed to object. Therefore, any claim by Univision at this late date is moot.

UNIMUNDO registered its name and logo design pattern and the individual unique shapes as

1 trademarks with the USPTO as well as other countries, Univision deliberately failed to file any objection
2 to the mark and therefore, the trademark should now be incontestable.

3 VI. NOT HAVING ANY STANDING UNIVISION SEEKS TO WIN PROCEDURALLY

4 It is important to note here that the Attorney for Univision in a predictable move and in a slight of
5 hand, not only has he lied, he also want to procedurally win this case. The problem here is that neither
6 Univision nor its attorneys have any legal standing in this case, in the first place.

7 Learned counsel for Univision has gone out of his way to attempt to pound UNIMUNDO's
8 pleadings and filings with alleged procedural defects, particularly under the CFR's, despite the fact that
9 Univision has no standing whatsoever in this action to be alleging anything procedural defects in this
10 case and much less citing any case law and/or tiles against UNIMUNDO.

11 Univision has a long history of vexatious litigation against anyone and anything that moves just
12 because they want to control the Spanish Television and Internet Broadcasting. The federal courts are
13 replete with litigation from Univision, most of which are filled with baseless allegations in hopes to win
14 through bullying and intimidation to force opponents to abandon their lawful cause.

14 VII. UNIMUNDO IS PROCEEDING IN PRO SE

15 Pleadings of a pro se Defendant **SHALL NOT BE** dismissed for lack of form or failure of process.
16 All the pleadings are as any reasonable man/woman would understand, and:

17 "And be it further enacted. That no summons, writ, declaration, return, process, judgment, or other
18 proceedings in civil cases in any of the courts or the United States, shall be abated, arrested,
19 quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed
20 and give judgment according as the right of the cause and matter in law shall appear unto them,
21 without regarding any imperfections, defects or want of form in such writ, declaration, or other
22 pleading, returns process, judgment, or course of proceeding whatsoever, except those only in cases
23 of demurrer, which the party demurring shall specially sit down and express together with his
24 demurrer as the cause thereof. And the said courts respectively shall and may, by virtue of this act,
25 from time to time, amend all and every such imperfections, defects and wants of form, other than
26 those only which the party demurring shall express as aforesaid, and **may at any, time, permit**
27 **either of the parties to amend any defect in the process of pleadings upon such conditions as**
28 **the said courts respectively shall in their discretion, and by their rules prescribe (a)" *Judiciary***
Act of September 24, 1789*, Section 342, **FIRST CONGRESS, Sess. 1, ch. 20, 1789.*

25 See also *Estelle Corrections Director, et al. v. Gamble*, 29 U.S. 97, 97 S. Ct. 285, 50 L. Ed. 2d
26 251; *Baldwin county Welcome Center v. Brown*. 466 U.S. 147, 104 S. Ct. 1723, 80 L. Ed. 2d 196, 52
27 U.S.L.W. 3751. Rule 8(f) provides that "pleadings shall be so construed as to do substantial justice." We
28

1 frequently have stated that pro se pleadings are to be given a liberal construction. The Court ruled that
2 "Pro Se Litigants pleadings are to be construed liberally and held to less stringent standards than
3 lawyers" *Haines v Kerner, Warden of Illinois State Penitentiary*, (1972) 404 US 519 (1972).

4 VII. DISCOVERY IN THIS ACTION WAS ORDERED HALTED BY THE BOARD

5 Univision has failed to recognize that the Board on July 13, 2011 placed on hold all discovery
6 proceedings in this case, pending the resolution of UNIMUNDO's Motion to Dismiss. Univision seems
7 to place reliance on two cases dealing with Discovery and production of documents which are wholly
8 inapplicable to this case and do tend to support UNIMUNDO's position. *Pioneer Kabushiki Kaisha*
9 *dba Pioneer Corporation*, 73 USPQ2d 1672, 1677 (TTAB 2005) and *No Fear Inc. v. Rule*, 54 USPQ
10 1551 (TTAB 2000). The fact of the matter is that the *Pioneer* case, stands for the proposition that:

11 *“Trademark Rule 2.120(f) provides that, upon motion by a party from whom a discovery*
12 *deposition is sought, and for good cause shown, the Board may make any order which justice*
13 *requires to protect a party from annoyance, embarrassment, oppression, undue burden or*
14 *expense.”*

15 *No Fear Inc. v. Rule*, supra, states in no uncertain terms that the Board granted the opposition's
16 motion to compel as uncontested and applicant was ordered to provide discovery responses without
17 objection within 30 days. The Opposition argued that responses were deficient and moved for sanctions
18 in form of entry of judgment. Applicant argued that certain documents are privileged and, thus, not
19 discoverable. Therefore, Univision is wrong on both counts. The complaint filed by Univision will prove
20 to be just that *“annoyance, embarrassment, oppression, undue burden or expense* to UNIMUNDO.ious.

21 VIII. UNIVISION MALICIOUSLY CONFLATES UNIMUNDO WITH UNIVISION

22 Univision is seeking to have the Board unfairly and unjustly expand its current trademark protection
23 to include the words *“uni”* and *“mundo”* neither of which belongs to Univision. Univision is trying to
24 bootstrap to UNIMUNDO not just the Univision name but its *“Tulip”* logo trademark in hopes to
25 convince the Board that the name Univision and the unique colors of its *“Tulip”* logo can be confused
26 with the name UNIMUNDO or its *“U”* shaped logo. The Board should refuse to consider these
27 concerns, and instead focus how to evaluate similar marks under the likelihood of confusion doctrine. It
28 should also decline to address whether colors may be considered as part of a preexisting trademark in
order to receive the same protection.

UNIMUNDO's logo is a *“U”* design which consists of solid blue colors, dark and light and with a
solid white streak tail-like design inside www.unimundotv.com. Univision's logo www.univision.com

1 and in www.wikipedia.org/wiki/Univision is an unclear and undefined “U.” In fact, it does not even
2 look like a “U.” Univision call its logo a “*Tulip*” where the top left quarter is *purple* with a twist to the
3 left, a *green* square on the top right, a *red* pie on the lower left hand corner and a light *blue* pie on the
4 lower right hand corner, none which in combination identify a letter “U” furthermore, the logo is then
5 cut horizontally and vertically dividing it into four (4) color parts: **purple, green, red and blue**. The
6 UNIMUNDO logo and the Univision logos are completely dissimilar by way of shape, design, color and
7 meaning and any allegation of semblance is a figment of Univision’s imagination.

8 The trademark names of Univision and UNIMUNDO are also dissimilar. Univision’s claim that the
9 two names can be confusing because they both have “Uni” is outrageous. The word “Uni” is a generic
10 name for the word “one” or “uno” in Latin. A *Single one, Unicycle, “Uni”* is also a shortened word for
11 *University*, a character in *Dungeness and Dragons (TV Series; JJ Uni Records*, formally called
12 *Universal City Records*, an *urban-type Settlement* in Kirov Oblast, Russia, *the Supreme Goddess of*
13 *Etruscan Mythology, Uni* for *sea-urchin* in Japanese restaurants, *uniball Pens* for some pens and
14 pencils, *Uni for Uniform spaces* in mathematics, *Uni Global Union*, an international trade union
15 federation, a *user-network interface*, which is a junction from which a telecommunications services is
16 connected between the service provider and the end user, *Uniradio*, a radio station in San Diego, CA.
17 “Uni” is also the shortened word for *university; University High School (Irvine, California); University*
18 *Laboratory High School (Urbana, Illinois); Union Nationale Inter-universitaire*, a French right-wing
19 union of *university* students; National University of Engineering (*Universidad Nacional de Ingenieria*),
20 Lima, Peru; Independent *University (Universidade Independente)*, Lisbon, Portugal.

21 The word “*Vision*” is also quite generic; the faculty of sight; eyesight: *poor vision* and even as
22 applied in trademarks, as it has been used by *Pearle Vision; Plaza Vision Center; Uptown Vision; Visual*
23 *Perception; Vision (Timely Comics), Visions (Magic-The gathering- a card game). Vision or visions*
24 also refer to: *Visual* perception, interpreting what is seen; *Visual* system, the sensory mechanism of
25 eyesight; *Vision (spirituality)*, inspirational experiences ; Hallucination, vivid conscious perception in
26 the absence of a stimulus.

27 The word “*Mundo*” in Spanish or “*world*” in English; *everyone, everybody, Mundo (river)*, river
28 in south-eastern Spain; *Mundo*, California, unincorporated community in Imperial County; *Mundo*
(album), 2002 album by Rubén Blades; *Mundo (Hun)*, descendant of Attila the Hun.

Univision is also not entitled to claim ownership of the word “Uni” nor “Mundo.” Furthermore,

1 **"Telemundo"** is not a complainant here, for good reasons, because they too cannot claim ownership
2 over the word **"Mundo."** There has been plenty of case law on this very subject, such as **"domino"** for
3 sugar and spices and pizzas, **"holiday inns and holiday outs,"** the uses of the word **"world," "chico,"**
4 and **"golden JJ"** that courts have found to be weak trademarks because they are generic names.

5 Under current Supreme Court case law; a logo comparison cannot be made side-by-side. It must be
6 made independently of each other. There is also no similarity whatsoever in the products from
7 Univision Television Broadcasting and UNIMUNDO, Television video broadcasting over the internet,
8 identity of retail outlets, or purchasers, or consumers, or subscribers or members other than the fact that
9 UNIMUNDO and Univision mutually seek the Spanish speaking world as their target market audience.

10 UNIMUNDO is not trying to pass-off its product or services for those of Univision. Quite the
11 opposite www.UnimundoTV.com is a music, movie and documentary site or venue for uploading of HD
12 videos by its own members for internet TV viewing much like www.vimeo.com and www.youtube.com.
13 To this end, compare www.univision.com. There is not one iota of similarities or any intent by
14 UNIMUNDO to benefit whatsoever from Univision's reputation.

15 UNIMUNDO's **"U"** logo is unquestionably substantially different and distinguishable from
16 Univision, **"Tulip"** logo and the same goes for the word UNIMUNDO. There cannot possibly be any
17 confusion by any ordinary consumer, Spanish or not or other purchaser or visitor to the web sites that
18 would be misled into thinking that they have gone into the world of Univision looking for UNIMUNDO
19 and vice versa. **"Univision" is "One Vision," and "UNIMUNDO" is "One World."** UNIMUNDO by
20 no means is trying to dilute the good name of Univision.

21 **IX. UNIMUNDO AND ITS "U" LOGO ARE PROTECTED UNDER THE "LAHAM ACT"**

22 Univision is unjustly seeking judicial protection when none is due. Univision is claiming trademark
23 infringement in the hopes of expanding trademark protection into a doctrine that could safeguard both
24 the name **"Uni"** and **"Mundo"** as well as a **"U"** shaped logo while the UNIMUNDO name and logo are
25 inherently distinctive marks that had achieved secondary meaning in the marketplace but there was no
26 likelihood of confusion between Univision and UNIMUNDO. *See Dooney & Bourke*, 454 F. 3d at 112.
27 (quoting *Louis Vuitton Malletier v. Dooney & Bourke, Inc.*, 340 F. Supp. 2d 415, 438-39 (S.D.N.Y.
28 2004), *affd in part, vacated in part*, 454 F.3d 108 (2d Cir. 2006)). *Raustiala & Sprigman, supra* note
29 27, at 1699. As a further example of copyright protection limits. 17 U.S.C.A. § 102 (West 2007). *See*
30 *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 765 (1992) (quoting *Taco Cabana Int'l, Inc. v.*

1 *Two Pesos, Inc.*, 932 F.2d 1113, 1117 (5th Cir. 1991), *affd.*, 505 U.S. 763 (1992)). U.S.C.A. § 1125(a)
2 (West 2007). See also *Knitwaves, Inc. v. Lollytogs Ltd.*, 71 F.3d 996, 1005 (2d Cir. 1995). See *Qualitex*
3 *Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 165 (1995); James E. Stewart & J. Michael Huget, *Trade*
4 *Dress: Protecting a Valuable Asset*, 74 MICH. B.J. 56, 57 (1995).

5 Trademark protection is available under sections 32 and 43(a) of the Lanham Act. Together, these
6 sections protect both registered and unregistered trademarks from misuse or reproduction in commerce,
7 such as the name UNIMUNDO and its “U” shaped logo neither of which are any sort of reproduction
8 of the Univision name or its “Tulip” logo. Section 32 only protects those trademarks that are registered
9 on the Principal Register with the United States Patent and Trademark Office.' Section 43(a) protects
10 qualifying unregistered trademarks by providing that an entity's *us[e] in commerce [o] any word, term,*
11 *name, symbol, or device, or any combination thereof.. which is likely to cause confusion, or to*
12 *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205, 212, 216 (2000). "We hold that, in an
13 *action for infringement of unregistered trade dress under § 43(a) of the Lanham Act, a product's design*
14 *is distinctive, and therefore protectable, only upon a showing of secondary meaning." Id. Knitwaves,*
15 *Inc.*, 71 F.3d at 1008. 15 U.S.C.A. § 1127 and 15 U.S.C.A. § 1127; 15 U.S.C.A. §§ 1114, 1125(a); 15
16 U.S.C.A. § 1125(a); *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768 (1992); 15 U.S.C.A. §
17 1052; *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205, 210-11 (2000). *Id.* at 211 (quoting to
18 *Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 U.S. 844, 851 n. 11 (1982)). The test to determine whether a
19 trademark is protected from trademark infringement under the Lanham Act is a two-part analysis: "The
20 plaintiff must provide factual proof that: (1) either secondary meaning or inherent distinctiveness has
21 been acquired by the trade dress [or trademark]; and (2) that the defendant's product is 'confusingly
22 similar' to the plaintiffs product." *Gruner + Jahr USA Publ'g v. Meredith Corp.*, 991 F.2d 1072, 1074
23 (2d Cir. 1993); *Carefirst of Md., Inc. v. First Care, P.C.*, 434 F.3d 263, 267 (4th Cir. 2006);
24 *Freedom Card, Inc. v. JPMorgan Chase & Co.*, 432 F.3d 463, 470-71 (3d Cir. 2005); *Davis v. Walt*
25 *Disney Co.*, 430 F.3d 901, 903 (8th Cir. 2005); *Scott Fetzer Co. v. House of Vacuums Inc.*, 381 F.3d
26 477, 484-85 (5th Cir. 2004); *Sullivan v. CBS Corp.*, 385 F.3d 772, 776 (7th Cir. 2004); *Sally Beauty*
27 *Co. v. Beautyco, Inc.*, 304 F.3d 964, 972 (10th Cir. 2002); *Int'l Assoc. of Machinists & Aerospace*
28 *Workers v. Winship Green Nursing Ctr.*, 103 F.3d 196, 201 (1st Cir. 1996); *Wynn Oil Co. v. Thomas*,
839 F.2d 1183, 1186 (6th Cir. 1988); *Ambrit, Inc. v. Kraft, Inc.*, 812 F.2d 1531, 1538 (11th Cir. 1986),

1 *Polaroid Corp. v. Polarad Elecs. Corp.*, 287 F.2d 492, 495 (2d Cir. 1961).

2 See also *Star Indus., Inc. v. Bacardi & Co.*, 412 F.3d 373, 390-91 (2d Cir. 2005); *Malletier v.*
3 *Burlington Coat Factory Warehouse Corp.*, 426 F.3d 532, 537 (2d Cir. 2005); *Nabisco, Inc. v.*
4 *Warner-Lambert Co.*, 220 F.3d 43, 46 (2d Cir. 2000); *Scott Fetzer*, 381 F.3d at 485; *Dippin' Dots, Inc.*
5 *v. Frosty Bites Distrib., LLC*, 369 F.3d 1197, 1208 (11th Cir. 2004); *Winship Green*, 103 F.3d at 20;
6 *Lang v. Ret. Living Publ'g Co.*, 949 F.2d 576, 581 (2d Cir. 1991); *Gruner + Jahr USA Publ'g v.*
7 *Meredith Corp.*, 991F.2d 1072, 1078 (2d Cir. 1993); "In assessing similarity, courts look to the overall
8 impression created by the logos and the context in which they are found and consider the totality of
9 factors that could cause confusion among prospective purchasers." *Id. Nabisco*, 220 F.3d at 47 (quoting
10 *Streetwise Maps, Inc. v. Vandam, Inc.*, 159 F.3d 739, 744 (2d Cir. 1998)); *Brennan's, Inc. v.*
11 *Brennan's Rest. LLC*, 360 F.3d 125, 133 (2d Cir. 2004). The Second Circuit agreed with the district
12 court that Vuitton's Multicolore mark deserved protection, but vacated the district court's decision to
13 utilize a side-by-side comparison to determine similarity of the marks. *Burlington Coat Factory*, 426
14 F.3d at 537; *Gruner + Jahr USA Publ'g v. Meredith Corp.*, 991 F.2d 1072, 1078 (2d Cit. 1993); *Louis*
15 *Vuitton v. Dooney & Bourke, Inc.*, 454 F.3d 108, 111 (2d Cir. 2006).

16 The court, relying on its holding in *Burlington Coat Factory*, stated that "courts must analyze the
17 mark's overall impression on a consumer, considering the context in which the marks are displayed and
18 the totality of factors that could cause confusion among prospective purchasers" to determine similarity
19 of the marks for likelihood of confusion."^o The court found that the district court improperly relied on a
20 Side-by-side comparison" to determine the similarity of Vuitton's and D & B's trademarks, rather than
21 using a sequential, marketplace comparison, and remanded the issue to the district court. The court held
22 that while the district court erred in determining this likelihood of confusion factor, by utilizing a side-
23 by-side comparison, the district court had not "clearly erred with respect to the other *Polaroid* factors."
24 As a result, the Second Circuit only compelled the district court to reanalyze the similarity of Vuitton's
25 and D & B's marks under the sequential, marketplace comparison, and to then rebalance all of the
26 *Polaroid* factors relevant to this case.

27 //
28

1 **III. CONCLUSION**

2 The complaint by Univision is without base in law or equity, vexatious, filed in bad faith and with
3 malice and it represents tortious interference with the business of UNIMUNDO.

4 Additionally, Univision for the third time has fallen short of even coming close to making any
5 factual argument for dilution. All Univision is seeking is a vexatious and protracted litigation in hopes
6 that UNIMUNDO will fold and go away.

7 Wherefore, UNIMUNDO moves the Board to dismiss Univision's complaint with prejudice for
8 failure to state a claim. Alternatively, the USPTO Trademark Trial and Appeal Board should issue an
9 order of cease and desist to direct Univision to strike the name "*Telemundo*" and to refrain from making
10 any further references, allegations or using the name "*Telemundo*" in this litigation.

11 Executed on July 28, 2011

12 Respectfully submitted,

13 

14 UNIMUNDO CORPORATION
15 By and through MARCUS FONTAIN
16 President and CEO, in pro se
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1 **PROOF OF SERVICE**

2 I MARCUS FONTAIN, on this date have caused to be served upon Petitioner by depositing one
3 copy in the United States Mail, First Class Mail, postage prepaid **UNIMUNDO'S OPPOSITION AND**
4 **TRAVERSE TO UNIVISION'S RESPONSE TO UNIMUNDO'S FURTHER OPPOSITION;**
5 **AND RENEWED MOTION TO DISMISS UNIVISION'S PETITION TO CANCEL THE**
6 **UNIMUNDO MARK FOR FAILURE TO STATE A CLAIM**, addressed to:

7 Jorge Arciniega
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9 Attorneys at Law
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19 Executed on this July 28, 2011

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