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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
Correspondence Address	MARCU FONTAIN PRESIDENT UNIMUNDO CORP 14859 MOORPARK ST, SUITE 103 SHERMAN OAKS, CA 91403 UNITED STATES marcus@unimundotv.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Marcus Fontain
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Signature	/Marcus Fontain, J.D./
Date	04/14/2012
Attachments	Unimundo Supplemental Memorandum of Law in Support of Motion to Dismiss - April 14, 2012.pdf (8 pages)(5150803 bytes)

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6 Registrant UNIMUNDO CORPORATION by and through
MARCUS FONTAIN, J.D. President and CEO, in pro se

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

1 UNIMUNDO CORPORATION,)	Cancellations No. 92054050
0 a Florida Corporation,)	Registration No. 3889485
)	
1 Registrant,)	REGISTRANT'S SUPPLEMENTAL
vs.)	MEMORANDUM OF LAW IN SUPPORT
)	OF MOTION TO DISMISS PETITIONER'S
1 UNIVISION COMMUNICATIONS, INC., a)	FIRST AMENDED PETITION TO CANCEL;
1 California Corporation,)	ALTERNATIVELY MOTION FOR AN
)	ORDER TO STRIKE ANY REFERENCE TO
2 Petitioner.)	"TELEMUNDO"
)	
1)	

3 COMES NOW Registrant UNIMUNDO CORPORATION by and through MARCUS FONTAIN,
1 J.D., President and CEO, in pro se and files this REGISTRANT'S SUPPLEMENTAL
4 MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS PETITIONER'S FIRST
1 AMENDED PETITION TO CANCEL; ALTERNATIVELY MOTION FOR AN ORDER TO STRIKE
5 ANY REFERENCE TO "TELEMUNDO"

6 **I. INTRODUCTION**

1 **A. Petitioner first alleges that Registrant Fraudulently Obtained Registration for
The Mark, which Contains Insufficient Factual Matter and Should be Dismissed**

7 1. "¶ 4. On or about March 31, 2010, Unimundo Corp. ("Registrant") filed an application with the

1 United States Patent and Trademark Office for registration of the word mark UNIMUNDO for
2 "television and internet broadcasting" in International Class 38, based on alleged use in interstate
3 commerce as of March 28, 2010. This application was assigned Serial Number 85003668. The
4 application included a declaration signed by Marcus Fontain, President and CEO of Unimundo Corp.,
5 which states under penalty of perjury that Registrant had been using the Mark in commerce as of the
6 filing date of the application. ¶ 5. On July 29, 2010, in response to an Office Action, Marcus Fontain
7 filed another declaration reiterating that the Mark had been used as of March 28, 2010 in connection
8 with an "internet broadcasting television network." ¶ 6. On December 14, 2011, the Mark was
9 registered with the USPTO, as Registration No. 3,889,485. ¶ 7. Prior to commencing this cancellation
1 proceeding, Petitioner investigated Respondent's alleged use of the Mark using internet search engines
0 and internet archives. Petitioner also carefully reviewed Respondent's website and publication material.
1 Petitioner's investigation revealed that Respondent was not using the Mark on all of the goods and
1 services listed in the application or in declaration filed by Mr. Fontain. ¶8. Based on Petitioner's
2 investigation, the Mark was not used in connection with "television broadcasting" or an "internet
1 broadcasting television network" as of March 28, 2010, as alleged in the application and the declarations
3 filed by Registrant in support of the application for the Mark. ¶ 9. **Upon information and belief**, and
1 upon the results of Petitioner's investigation, the verified statements signed by Marcus Fontain, President
4 and CEO of Unimundo Corp., and submitted with and in connection to the application for the Mark
1 contain knowingly false material misrepresentations of fact and such statements were made with the
5 intent to deceive the United States Patent and Trademark Office ("USPTO") and therefore constitute
1 fraud in the procurement of a registration. Specifically, Respondent knew that the Mark was not in use
6 in connection with all of the goods and services identified in the application at the time the application
1 was filed and the verified statements were submitted, and Respondent made such false, material
7 misrepresentations of fact with the intent to deceive the USPTO. ¶ 10. But for these material and willful

1 misrepresentations, the Mark would not have been registered for all the goods and services listed in the
2 registration certificate. 11. Based on the acts described herein, Respondent committed fraud in its efforts
3 to procure registration of the Mark.”

4 **B. The First Amended Petition includes a Second set of Allegations that UNIMUNDO**
5 **Mark is Likely to Cause Consumer Confusion with Petitioner's Registered and Senior**
6 **Marks, which Contains Insufficient Factual Matter and Should be Dismissed**

7 1. “¶ 12. Upon information and belief, the registration of the Mark is a blatant attempt to
8 capitalize on the goodwill and tremendous name recognition of the Petitioner. In a baldly crude fashion,
9 Registrant has attempted to get a free ride by combining Petitioner's Registered Marks with the name of
10 the second largest Spanish language television broadcaster in the US - Telemundo. Consumers who see
11 the "Frankenstein" mark that Registrant has created are likely to think either that the Mark is affiliated
12 with Petitioner or that the Mark and its related services are a joint venture between Petitioner and
13 Telemundo. ¶13. Registration and use of the Mark has and will continue to cause damage and harm to
14 the Petitioner.”

15 **C. The First Amended Petition Includes a Third set of Allegations that the UNIMUNDO**
16 **Mark is Likely to Dilute Petitioner's Famous Marks by Blurring and Tarnishment,**
17 **which Contains Insufficient Factual Matter and Should be Dismissed**

18 1. “¶ 14. Registration and use of the Mark is a misappropriation of Petitioner's unique, valuable
19 and exclusive rights to the Petitioner's Registered Marks. Registration of the Mark on the principal
20 register has and will likely continue to cause damage and harm to the Petitioner as a result of, amongst
21 other things, dilution by blurring and tarnishment. ¶ 15. Petitioner's Registered Marks became famous
22 long before Registrant filed its application for the Mark. ¶ 16. Registrant's use of the Mark in connection
23 with marketing, distribution, and promotion of Registrant's website and services, which do not include
24 the services cited in the application, is likely to cause dilution by blurring by impairing the
25 distinctiveness of Petitioner's Registered marks. ¶ 17. Registrant's use of the *Mark* in connection with

1 marketing, *distribution*, and promotion of Registrant's website and services, which do not include the
2 services cited in the application. is likely to cause dilution by tarmishment by harming the reputation and
3 goodwill associated with Petitioner's Registered Marks.”

4 **D. Any reference to Telemundo should be Ordered Striken and an Order directing**
5 **Univision to Refrain from Using the name Telemundo as the Stalking Horse should Issue**
6 **and additionally, because it Contains Insufficient Factual Matter and Should be Dismissed**

7 1. Telemundo is neither a complainant here nor a part of this litigation. Univision is not Telemundo
8 and the attorneys for Univision do not represent Telemundo.

9 2. Additionally, Telemundo is not here to represent itself for good reason.

1 3. On the issue of Univision persistent bootstrapping itself to Telemundo a stalking horse is highly
0 prejudicial to UNIMUNDO, it is inflammatory and outrageous.

1 4. Univision is not Telemundo and the attorneys for Univision do not represent Telemundo.

1 5. Telemundo is not here to represent itself for good reason.

1 6. Univision continuous attempt to capitalize on the name Telemundo without offering one shred
2 of reliable evidence and/or clear proof of this false allegation is legally wrong, malicious and outrageous
1 and the Board should order Univision to cease and desist to continue to use of the use of the name
3 Telemundo in this proceedings.

4 **E. The Board Admonished Learned Counsel for Univision to Stop Making Unsupported**
1 **and Unsubstantiated Allegations Upon information and belief, which Contains Insufficient**
1 **Factual Matter and Should be Dismissed**

5 1. ¶ 12. Upon information and belief, the registration of the Mark is a blatant attempt to
1 capitalize on the goodwill and tremendous name recognition of the Petitioner. In a baldly crude fashion,
6 Registrant has attempted to get a free ride by combining Petitioner's Registered Marks with the
1 name of the second largest Spanish language television broadcaster in the US - Telemundo. Consumers
7 who see the "Frankenstein" mark that Registrant has created are likely to think either that the Mark is
1

1 affiliated with Petitioner or that the Mark and its related services are a joint venture between Petitioner
2 and Telemundo.”

3 2. The continued legal arguments by Learned Counsel for Univision on behalf of a third party not
4 a part of this litigation is misleading and highly prejudicial.

5 3. To further demonstrate to the Board, Univision’s ill intentions and the vexatious nature of
6 Univision, they are not sure if they are dealing with the issues of Telefutera or Telemundo. The attorney
7 for Univision confused Telemundo at page 2 line 3 of the response, with Telefutera.

8 4. The mere mention of the name Telemundo in these proceedings is legally improper and the
9 Board should put an end to it.

10 5. The Board should issue an Order directing Univision cease and desist from any further use of
1 the name Telemundo because Univision **is not** Telemundo; Univision does not own Telemundo nor are
1 the Attorneys for Univision representing Telemundo.

1 6. Univision has made makes the false and misleading allegation that somehow UNIMUNDO
2 used words from Univision and Telemundo and put them together to create the mark UNIMUNDO to
1 confuse the public by creating “blurring and tarnishment.” This allegation is preposterous!

3 II. DISCUSSION

1 A. Motion to Dismiss Petitioner’s First Amended Petition - The Legal Standard

4 1. In considering a motion to dismiss under Federal Rule of Civil Procedure 12(b) (6), the court
1 must "take all factual allegations as true and draw all reasonable inferences in favor of the plaintiff."

5 *Rodriguez-Ortiz v. Margo Caribe, Inc.*, 490 F.3d 92, 96 (1st Cir. 2007); see also *Maldonado v.*

6 *Fontanes*, 568 F.3d 263, 266 (1st Cir. 2009). A motion to dismiss should be denied if a plaintiff has

1 shown "a plausible entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 559 (2007); see also

7 *Morales-Tanon Case 1:10-cv-11395-MLW* Document 18 Filed 09/27/11; *Torres-Rivera v. Puerto Rico*

1 *Electric Power Authority et al* , 524 F.3d 15, 18 (1st Cir. 2008) (applying the Bell Atl. standard to a

1 claim under 42 U.S.C. §1983); Rodriguez-Ortiz, 490 F.3d at 95-96 (applying the Bell Atl. Standard to a
2 claim under the Private Securities Litigation Reform Act). Federal Rule of Civil Procedure 8(a) (2)
3 requires that a complaint include a "short and plain statement of the claim showing that the pleader is
4 entitled to relief." This pleading standard does not require "detailed factual allegations," but does require
5 "more than labels and conclusions . . . , and a formulaic recitation of the elements of a cause of action
6 will not do" *Bell Atl.*, 550 U.S. at 555. A court may disregard "bald assertions, unsupported
7 conclusions, and opprobrious epithets." *In re Citigroup, Inc.*, 535 F.3d 45, 52 (1st Cir. 2008).

8
9 2. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as
1 true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949
0 (2009)(emphasis added). "Where a complaint pleads facts that are 'merely consistent with' a defendant's
1 liability, 'it stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.*
1 (*quoting Bell Atl.*, 550 U.S. at 557).

1 3. "Under Rule 12(b)(6), the district court may properly consider only facts and documents that
2 are part of or incorporated into the complaint." *Rivera v. Centro Medico de Turabo, Inc.*, 575 F.3d 10,
1 15 (1st Cir. 2009) (internal quotation marks omitted); *Watterson v. Page*, 987 F.2d 1, 3 (1st Cir. 1993).
3 From this rule, the First Circuit makes "narrow exceptions for documents the authenticity of which are
1 not disputed by the parties; for official public records; for documents central to plaintiff ['s] claim; or for
4 documents sufficiently referred to in the complaint." *Watterson*, 987 F.2d at 3-4; *Beddal v. State Street*
1 *Bank and Trust, Co.*, 137 F.3d 12, 16-17 (1st Cir. 1998) (When "a complaint's factual allegations are
5 expressly linked to – and admittedly dependent upon – a document (the authenticity of which is not
1 challenged) that document effectively merges into the pleadings and the trial court can review it in
6 deciding a motion to dismiss under Rule 12(b)(6).").
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III. CONCLUSION

WHEREFORE: the *First Amended Petition* should be dismissed for failure to state a claim. Registrant alleges Univision is simply not entitled to relief and the complaint should be dismissed with prejudice.

Additionally, the Board should order Petitioner to cease and deist from using the name Telemundo as a stalking-horse.

Executed Friday, April 14, 2012.

Respectfully submitted,



UNIMUNDO CORPORATION
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PROOF OF SERVICE

I MARCUS FONTAIN, on this date have caused to be served upon Petitioner by depositing one copy in the United States Mail, First Class Mail, postage prepaid REGISTRANT'S SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS PETITIONER'S FIRST AMENDED PETITION TO CANCEL; ALTERNATIVELY MOTION FOR AN ORDER TO STRIKE ANY REFERENCE TO "TELEMUNDO" addressed to:

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Executed Friday, April 14, 2012.

Respectfully submitted,


Marcus Fontain, J.D.