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

Proceeding	92054050
Party	Plaintiff Univision Communications Inc.
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Signature	/s/
Date	05/29/2012
Attachments	Opposition.pdf (4 pages)(90065 bytes)

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

UNIVISION COMMUNICATIONS INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92054050
	)	
UNIMUNDO CORP.,	)	
	)	
Registrant.	)	

RE: Registration No. 3889485
MARK: UNIMUNDO
Filed: March 31, 2010
Registration Date: December 14, 2010

RESPONSE TO UNIMUNDO'S TRANSVERSE AND AMENDED TRANSVERSE OPPOSITIONS

I. INTRODUCTION

Unimundo's recent "Transverse…" and "Amended Transverse…" filings (the "Filings"), are untimely, improper and not permitted by the Court's Order. Accordingly, the Filings should be disregarded and/or the relief sought should be denied.

II. UNIMUNDO'S FILINGS ARE PROCEDURALLY DEFECTIVE AND SHOULD BE DISREGARDED

First, the Filings, individually or together, do not constitute a proper reply. Rather than responding to the statements made in Univision's Opposition, the Filings purports to assert new facts and legal bases for a *new* motion to dismiss. This is not permitted. See TBMP § 502.02(b) and *Pioneer Kabushiki Kaisha v. Hitachi High Technologies*, 73 USPQ2d 1672 , 1677 (TTAB 2005) and *No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1553 (TTAB 2000). A reply is meant to

respond to the statements made in the Opposition, not to be used as a vehicle to assert another improper and untimely motion to dismiss. Accordingly, the Filings should be disregarded.

Second, even if the Filings were considered as further motions to dismiss, the Filings are improper and untimely under Fed. R. Civ. P. 12(b) and TBMP §503.01. The rules state that a motion to dismiss must be filed before or concurrently with the movant's answer. Fed. R. Civ. P. 12(b) and TBMP §503.01. Here, Unimundo filed its Answer to Univision's First Amended Petition to Cancel on April 13, 2012 (see TTAB Docket No. 17). Accordingly, Unimundo's newly filed motions to dismiss (the Filings) must either be denied as untimely, or treated as premature motions for summary judgment.

Third, Unimundo's Filings cannot be considered as motions for summary judgment because they are premature. Pursuant to TBMP §503.04, the circumstances in which the Board will convert a motion to dismiss into a summary judgment motion are very limited. More specifically, a party may not file a motion for summary judgment (and likewise the Board will not convert a motion to dismiss into a motion for summary judgment) until the moving party has made its initial disclosures. TBMP §503.04. Here, Unimundo has not made its initial disclosures. Accordingly, its is premature to convert (or seek to convert) Unimundo's Filings into summary judgment motions. Since the Filings cannot be considered either as motions to dismiss or as summary judgment motions, the Filings must be disregarded and the relief sought must be denied.

Finally, on May 15, 2012, the Board issued an order suspending the proceedings ("Order"). The Board's Order states that the Board will not consider any papers that do not

relate directly to the pending motion to dismiss the First Amended Petition to Cancel.[1] Unimundo attempts to circumvent this Order by filings its new motions to dismiss as "transverse" filings. Setting aside the fact that no such filings exist or are permitted under the Federal Rules of Civil Procedure or the TTAB Manual of Procedure, Unimundo's Filings are in direct violation of the Board's Order and should therefore, be given no consideration.

VI. CONCLUSION

For the foregoing reasons, Univision Communication Inc. respectfully requests the Board to disregard Unimundo's Filings and/or deny the relief sought therein.

Respectfully submitted,

UNIVISION COMMUNICATIONS INC.

Dated: May 29 ,2012 By: _____/s/_____
Ellie Hourizadeh
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[1] Univision does not mean to disregard the Order by filing this response. Univision files this response solely to avoid any inference that Univision concedes to consideration of the Filings or the allegations made therein.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing RESPONSE TO UNIMUNDO'S TRANSVERSE AND AMENDED TRANSVERSE OPPOSITIONS OPPOSITION upon Registrant by depositing one copy in First Class mail, in the United States mail, postage prepaid, on **May 29, 2012** addressed as follows:

Marcus Fontain
UNIMUNDO CORP.
14859 Moorpark St., Unit 103
Sherman Oaks, CA 91403-2591

By: _____/s/_____
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