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Filing date: **08/12/2015**

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

Proceeding	92054050
Party	Defendant Unimundo Corp dba Unimundotv
Correspondence Address	RICK RUZ RICK RUZ LLC 300 SEVILLA AVENUE , SUITE 309 CORAL GABLES, FL 33134 UNITED STATES legal@unimundo.tv; rickruz@ruzlaw.com
Submission	Other Motions/Papers
Filer's Name	Alain Villeneuve
Filer's e-mail	avilleneuve@vedderprice.com
Signature	/Alain Villeneuve/
Date	08/12/2015
Attachments	Motion for Trial.pdf(727128 bytes )

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

UNIVISION COMMUNICATIONS INC., a  
Delaware corporation,

Petitioner,

v.

UNIMUNDO CORP DBA UNIMUNDOTV, a  
Florida corporation,

Registrant.

Marks: UNIMUNDO

Cited Marks:

UNIVISION (Reg. No. 1,624,073)  
UNIVISION (Reg. No. 1,672,807)  
UNIVISION (Reg. No. 2,518,239)  
UNIVISION (Reg. No. 2,518,240)  
UNIVISION.COM (Reg. No. 2,528,166)  
UNIVISION.COM (Reg. No. 2,518,241)  
UNIVISION RADIO (Reg. No. 3,568,848)  
UNIVISION MÓVIL (Reg. No. 3,483,636)  
U UNIVISION M · Ó · V · I · L (Reg. No.  
3,570,072)  
RADIOCADENA UNIVISION (Reg. No.  
3,736,267)  
U (design) (Reg. No. 3,703,908)  
U (design) (Reg. No. 3,780,080)  
U (design) (Reg. No. 3,714,485)  
U (design) (Reg. No. 3,714,486)  
U (design) (Reg. No. 3,830,142)

Cancellation No.: 92/054,050

**MOTION FOR REQUEST FOR TRIAL / ATTORNEY WITHDRAWAL**

U.S. Serial No. 3,889,485 for the mark UNIMUNDO has now been registered since December 10, 2010 on the principal register. For close to half a decade, UNIMUNDO has been operating without confusion in the marketplace. On May 26, 2011, the Petitioner filed to cancel this mark. In 2012, after several motions to dismiss, Registrant answered. TTABVIEW #17. After years of very intense litigation, Counsel for Registrant was denied withdrawal.

TTABVIEW #62. On March 4, 2015, the law firm of Vedder Price, P.C. filed an appearance. TTABVIEW #65. This entry is the last on this case which now lingers on. The new attorneys for Registrant have great experience before the Board and understand the issues at hand.

On November 13, 2014, Ms. Elizabeth A. Dunn provided that “the proceedings herein are suspended pursuant to Trademark Rule 2.124(d)(2) in order to allow the parties sufficient time in which to complete the testimony upon written questions.” TTABVIEW #54. Ms. Dunn further wrote: “Petitioner shall promptly advise the Board of the completion of the testimony upon written questions in order that the Board can reschedule the remaining trial dates (commencing with Respondent’s trial period) in this consolidated case.” TTABVIEW #54.

One would expect that Petitioner to endeavor to get the testimony upon written questions done. The truth will shock this Board. As the parties were discussing settlement, the attorney for Registrant tried to get the testimony completed. On June 15, 2015, trying to get the written deposition, the counsel for Registrant wrote to Petitioner’s counsel “I (as this client’s attorney) have asked several times for these questions to be provided to me. I do not understand why you would refuse to provide me these questions while pushing the District action.” See Exhibit A. Fearful the request for testimony was not in good faith, the Attorney for Registrant wrote as part of the exchange:

“I would raise a concern from this morning’s email exchanges with Ms. Hourizadeh. A district court subpoena for written discovery cannot be used as leverage to force a party into settlement. When, after years of hostile litigation, a defendant hires a new attorney who is trying to get into a Plaintiff’s hands information it has worked hard to get, and the Plaintiff refuses to help the adverse attorney, there is truly one conclusion which can be drawn. Under Rule 37, the parties must cooperate in discovery and the information must exchange freely. Using the Courts as leverage to gain in settlement is illegal. As the new attorney for Mr. Fontain, I endeavor to resolve this matter and get into your hands information she has now admitted by email was once acceptable. (“We gave Unimundo several opportunities to answer these questions in the form of interrogatories.”) Unlike what Mr. Hourizadeh suggests, I represent Mr. Fontain

and this defendant in the Cancellation proceeding and while I did not appear in the District Court, we are Mr. Fontain's attorneys. The fact that Mr. Fontain can easily represent himself in the District Court matter does not change this fact. Once this deposition is secured, we will simply move at the TTAB to strike it along the grounds of a failure to respect Rule 37. I cannot imagine our Board will be amused by knowing that as of May 15, 2015, I tried several times to get the information into your hands and you refused for strategy reasons." See Exhibit A.

Simply said, Petitioner had stalled this action and was using a District Court action as leverage to drag this case on. It knows it has no evidence to enter trial and at this point wishes to tire the Registrant.

Admission of this nagging suspicions came on July 22, 2015, when the attorney for the Petitioner wrote to Mr. Fontain himself: "Please note that we have not yet scheduled your deposition because we remain hopeful that we will be able to resolve this matter by entering into the settlement agreement currently being negotiated between your TTAB counsel and ourselves. If we are unable to reach a settlement, we will contact you to schedule your deposition." See Exhibit B.

The next week, the TTAB counsel wrote:

"Jorge, While I thank you for the latest redraft, these negotiations are not converging. If you recall, Univision reached out to my client and suggested an agreement, not the reverse. I fail to see why my client should be bound (a) not to file for protection around the world for UNIMUNDO for anything outside of internet broadcast even if this does not conflict with your rights, (b) sign an agreement which allows Univision to sue Unimundo after 30 days when itself cannot turnaround a redraft in that same period, and (c) refuse to expressly provide that it will not oppose refiled applications. Please consider these negotiation failed. I have convinced my client to sit down for a deposition in Chicago. Give me some times when this suits you. Alain" See Exhibit B.

The negotiations failed and have ended. The attorney for Registrant asked for dates and has yet to receive anything. Truth be told, much like the Board's Interlocutory Attorney, Respondent's new counsel is desperately trying to get this case to trial but this Petitioner is

abusing the largesse of the Board. The fact that this Petitioner simply refuses to schedule the deposition is evidence of bad faith. Irrespective of the negotiations, the Board has granted a suspension “to allow the parties sufficient time in which to complete the testimony upon written questions.” TTABVIEW #54.

Tired by the silence and refusal to collaborate of the attorneys for Petitioner, the Attorney for Registrant turns to the Board for help. At this point, Registrant is ready for written discovery, oral discovery, or even to enter an affidavit responding to the written questions. Attorney for Registrant just wants completion of this simple task. This Board after reading this motion might find the deposition to be a fraud designed to gain leverage on this small defendant. In the event the Board wants the deposition to proceed, after conferring with his client, Mr. Fontain can be made available at the office of Vedder Price, P.C. on any day of August, September, and October 2015 upon a 48 hour notice (with the exception of the week between September 26 to October 5). The deposition can be oral, written, or via a testimony.

Registrant asks this Board to reschedule the remaining trial dates (commencing with Respondent’s trial period) as provided in the last standing order. TTABVIEW #54.

**Withdrawal of Attorney Ruz under 37 C.F.R. § 2.19(b)(3)(ii)**

Registrant’s counsel notes for the record the Herculean efforts of Trademark Attorney Dunn in getting Registrant to flank himself with adequate counsel. Hopefully the Trademark Attorney finds the situation to be mostly resolved. Registrant retained a first counsel who is thanked for his service. Registrant has also signed a retainer as of 3/1/2015 and retained the law firm of Vedder Price, P.C. acting as co-counsel and that said representation is currently ongoing. An appearance by Vedder Price, P.C. has been filed on March 4, 2015. Registrant would like to

apologize for any inconvenience this financial hardship may have created on the Trademark Attorney and the Board.

Under 37 C.F.R. § 2.19(b)(3)(ii), the request for withdrawal from Attorney Ruz must include either (i) A statement of notice, or (ii) if more than one qualified practitioner is of record, a statement that representation by co-counsel is ongoing. Registrant as part of this filing makes such a statement that representation by co-counsel is ongoing. For this reason, the Board does not need to review the information provided by the co-counsel and should grant the Motion to Withdraw filed by Attorney Ruz.

Respectfully submitted,

UNIMUNDO CORP DBA UNIMUNDOTV

/s/Alain Villeneuve  
One of Its Attorneys

Dated: August 12, 2015

Alain Villeneuve  
Vedder Price P.C.  
222 N. LaSalle St., Suite 2600  
Chicago Illinois 60601  
(312) 609 7745  
(312) 609 5005 (fax)  
avilleneuve@vedderprice.com

# **EXHIBIT A**

## Villeneuve, Alain

---

**From:** Marcus Fontain <marcus@unimundo.tv>  
**Sent:** Wednesday, July 22, 2015 6:54 PM  
**To:** Villeneuve, Alain  
**Subject:** FW: Unimundo's OMNIBUS Reply to Univision's Opposition for Reconsideration and Motion to Quash Subpoena

Hi Alain:

See attached from Ms. Hourizadeh

**Marcus Fontain, J.D.**  
President and CEO  
[www.unimundo.tv](http://www.unimundo.tv)  
[marcus@unimundo.tv](mailto:marcus@unimundo.tv)  
Bus. 800-516-1134  
Fax. 800-516-1143  
Mbl. 424-204-2225

---

**From:** Hourizadeh, Ellie [<mailto:ehourizadeh@mwe.com>]  
**Sent:** Wednesday, July 22, 2015 7:29 PM  
**To:** 'Marcus Fontain'  
**Cc:** Arciniega, Jorge  
**Subject:** RE: Unimundo's OMNIBUS Reply to Univision's Opposition for Reconsideration and Motion to Quash Subpoena

Thank you.

Mr. Fontain,

Please note that we have not yet scheduled your deposition because we remain hopeful that we will be able to resolve this matter by entering into the settlement agreement currently being negotiated between your TTAB counsel and ourselves. If we are unable to reach a settlement, we will contact you to schedule your deposition.

Thank you.

**Ellie Hourizadeh**  
Partner

**McDermott  
Will & Emery**

McDermott Will & Emery LLP | 2049 Century Park East, 38th Floor | Los Angeles, CA 90067-3218  
Tel +1 310 551 9321 | Fax +1 310 277 4730

[Biography](#) | [Website](#) | [vCard](#) | [E-mail](#) | [Twitter](#) | [LinkedIn](#) | [Blog](#)

---

**From:** Marcus Fontain [<mailto:marcus@unimundo.tv>]  
**Sent:** Wednesday, July 22, 2015 4:22 PM  
**To:** Hourizadeh, Ellie  
**Subject:** Unimundo's OMNIBUS Reply to Univision's Opposition for Reconsideration and Motion to Quash Subpoena

Ms. Hourizadeh:

I am sorry for the inconvenience. Here is its.

**Marcus Fontain, J.D.**

President and CEO

[www.unimundo.tv](http://www.unimundo.tv)

[marcus@unimundo.tv](mailto:marcus@unimundo.tv)

Bus. 800-516-1134

Fax. 800-516-1143

Mbl. 424-204-2225

---

**From:** Hourizadeh, Ellie [<mailto:ehourizadeh@mwe.com>]

**Sent:** Wednesday, July 22, 2015 11:19 AM

**To:** Marcus Fontain; Arciniega, Jorge

**Subject:** RE: Unimundo's OMNIBUS Reply to Univision's Opposition for Reconsideration and Motion to Quash Subpoena

Mr. Fontain

There is no attachment to your email. Please resend.

**Ellie Hourizadeh**

Partner

**McDermott  
Will & Emery**

McDermott Will & Emery LLP | 2049 Century Park East, 38th Floor | Los Angeles, CA 90067-3218

Tel +1 310 551 9321 | Fax +1 310 277 4730

[Biography](#) | [Website](#) | [vCard](#) | [E-mail](#) | [Twitter](#) | [LinkedIn](#) | [Blog](#)

---

**From:** Marcus Fontain [<mailto:marcus@unimundo.tv>]

**Sent:** Wednesday, July 22, 2015 8:19 AM

**To:** Hourizadeh, Ellie; Arciniega, Jorge

**Subject:** Unimundo's OMNIBUS Reply to Univision's Opposition for Reconsideration and Motion to Quash Subpoena

FYI

FILED: Unimundo's OMNIBUS Reply to Univision's Opposition for Reconsideration and Motion to Quash Subpoena

**Marcus Fontain, J.D.**

President and CEO

[www.unimundo.tv](http://www.unimundo.tv)

[marcus@unimundo.tv](mailto:marcus@unimundo.tv)

Bus. 800-516-1134

Fax. 800-516-1143

Mbl. 424-204-2225

\*\*\*\*\*

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Please visit <http://www.mwe.com/> for more information about our Firm.

# **EXHIBIT B**

## Villeneuve, Alain

---

**From:** Villeneuve, Alain  
**Sent:** Monday, July 27, 2015 5:29 PM  
**To:** 'Arciniega, Jorge'  
**Cc:** Beiser, Robert S.; Hourizadeh, Ellie  
**Subject:** RE: Univision/Unimundo: Revised Settlement Agreement

Jorge,

While I thank you for the latest redraft, these negotiations are not converging. If you recall, Univision reached out to my client and suggested an agreement, not the reverse. I fail to see why my client should be bound (a) not to file for protection around the world for UNIMUNDO for anything outside of internet broadcast even if this does not conflict with your rights, (b) sign an agreement which allows Univision to sue Unimundo after 30 days when itself cannot turnaround a redraft in that same period, and (c) refuse to expressly provide that it will not oppose refiled applications.

Please consider these negotiation failed.

I have convinced my client to sit down for a deposition in Chicago. Give me some times when this suits you.

Alain

## VEDDER PRICE®

### Alain Villeneuve

Shareholder/Solicitor

T: +1 (312) 609 7745 | F: +1 (312) 609 5005

M: +1 (312) 404 1569

[avilleneuve@vedderprice.com](mailto:avilleneuve@vedderprice.com)

Assistant: Eileen Sosnicki, +1 (312) 609 7781

### Vedder Price P.C.

222 North LaSalle Street

Chicago, Illinois 60601

Chicago | New York | Washington, DC | London

[www.vedderprice.com](http://www.vedderprice.com)

---

**From:** Arciniega, Jorge [<mailto:jarciniega@mwe.com>]  
**Sent:** Thursday, July 23, 2015 7:54 PM  
**To:** Villeneuve, Alain  
**Cc:** Beiser, Robert S.; Hourizadeh, Ellie  
**Subject:** RE: Univision/Unimundo: Revised Settlement Agreement

Dear Alain

Here is the revised agreement – a clean new version, and two different comparison versions, for your ease of reference. Some explanatory notes:

1. In Sections 1 and 2 we did not accept your language “which will not be opposed by Univision.” In each section Univision is already agreeing that this is what your client will re-file for, should it wish to do so. No need for the redundancy.
2. In section 5, as you requested, I deleted “or the second level names listed in paragraph 4,” even though that language, in my view, benefitted your client.

3. It was difficult to figure out what your proposed changes intended for Section 6. In the first half of the paragraph, you were agreeing that UNIMUNDO could register its mark internationally ONLY with respect to “internet broadcasting of user generated content.” But in the second half you wanted the section to say that UNIMUNDO could ALSO register the mark for goods and services not related to radio, television, etc. “ONLY” and “ALSO” are incompatible. So, I went with a streamlined version of what my client is asking for.

Everything else is self-explanatory.

**Jorge Arciniega**  
Partner

**McDermott  
Will & Emery**

McDermott Will & Emery LLP | 2049 Century Park East, 38th Floor | Los Angeles, CA 90067-3218  
Tel +1 310 551 9306 | Fax +1 310 277 4730

---

**From:** Villeneuve, Alain [<mailto:avilleneuve@vedderprice.com>]  
**Sent:** Monday, June 22, 2015 3:46 PM  
**To:** Arciniega, Jorge  
**Cc:** Beiser, Robert S.  
**Subject:** RE: Univision/Unimundo: Revised Settlement Agreement

Jorge,

I do feel like we are making serious progress and I thank you for your involvement in this matter. In the attached June 22 version, you will find our own effort to advance this matter to the goal line. I have convinced my client to agree to extend the agreement to the world as long as our right to file and protect UNMUNDO remains the same as in the USA. Since our services are internet-based, that makes the most sense. The line in the sand drawn between these parties today should be, for example, valid in all Spanish speaking jurisdictions.

Before I get into the dynamics of my suggested draft, I would like to make two clarifications of facts which appear to permeate through your strategy. First, my client is an attorney with an inhuman tolerance for litigation and enjoys Federal Courts in general. Unlike what Ms. Hourizadeh must think, Mr. Fontain is not scared by the prospect of litigating until 2022, in fact he is looking forward to it. He already readies his appeal brief as we speak. Mr. Beiser and I have been trying very hard to convince him to settle this matter which he, as a pro se defendant, has placed in a wonderful position thanks to years of hard work. While we see the wisdom in ending conflicts, we remind you that thanks to the B&B Hardware case (which I have authored a piece on my bio), I have advised my client that the Board’s determination of confusion in this Cancellation will now be binding on any District Court. For this reason, unless we are presented with very acceptable terms, we must not settle this litigation and more importantly we cannot sign an agreement which results in subsequent determination of confusion. My client has already agreed to push this to trial after the long process of appeal in the Federal Case. In an effort to expedite things, I am trying to resolve the deposition in a time efficient way.

You need to remind yourself that Univision reached out to my client to settle, not the reverse. My motions are ready to move this to trial and knowing Ms. Dunn, we will get there very quickly.

I would raise a concern from this morning's email exchanges with Ms. Hourizadeh. A district court subpoena for written discovery cannot be used as leverage to force a party into settlement. When, after years of hostile litigation, a defendant hires a new attorney who is trying to get into a Plaintiff's hands information it has worked hard to get, and the Plaintiff refuses to help the adverse attorney, there is truly one conclusion which can be drawn. Under Rule 37, the parties must cooperate in discovery and the information must exchange freely. Using the Courts as leverage to gain in settlement is illegal. As the new attorney for Mr. Fontain, I endeavor to resolve this matter and get into your hands information she has now admitted by email was once acceptable. ("We gave Unimundo several opportunities to answer these questions in the form of interrogatories.") Unlike what Mr. Hourizadeh suggests, I represent Mr. Fontain and this defendant in the Cancellation proceeding and while I did not appear in the District Court, we are Mr. Fontain's attorneys. The fact that Mr. Fontain can easily represent himself in the District Court matter does not change this fact. Once this deposition is secured, we will simply move at the TTAB to strike it along the grounds of a failure to respect Rule 37. I cannot imagine our Board will be amused by knowing that as of May 15, 2015, I tried several times to get the information into your hands and you refused for strategy reasons.

As for the agreement itself, I propose the following changes:

Sections 1 & 2: We wish to make clear that UNIVISION will not oppose any newly filed UNIMUNDO trademark if one needs to be refiled.

Section 3: Once again, we are very uncomfortable with the use of "confusingly similar" but since two marks are offered, the suggested change is acceptable.

Section 4: In an effort of clarity, the wording as written allows my client to file for example UNIMUNDOBRAZIL.br and/or UNIMUNDO.BR and not UNIMUNDOBRAZIL.TV or UNIMUNDOBRAZIL.RADIO. Once again, if UNIMUNDO.BR is taken in a country, we must be able to get the closest useful match which starts with UNIMUNDO and does not conflict with your enumerated list. Section 5 makes this clear. If not, please clarify.

Section 6: I liked your suggested wording in 5 for the TLD so I used the same description to limit the protection of UNIMUNDO as a mark around the world. We must be clear, we need UNIMUNDO but not in relationship with the services you hold dear. As written, we get UNIMUNDO for broadcasting of user generating content around the world and we can register UNIMUNDO in association with non tv goods around the world. When I said t-shirt, that was just an example. If UNIMUNDO wants to branch out into cheese production, it should be able to do so.

Section 7: The words "each Party will be free to pursue any remedies it wishes to pursue" in my opinion can circumvent B&B Hardware and launch the confusion analysis. We can endeavor to discuss reasonable steps. In the event a party is unreasonable in the avoidance of confusion (i.e. one party suggests a corrective action and the other ignores), then that party will have a breach of contract action, we can live with that.

Section 8: Once again, we insist on bygones being bygones.

Sincerely,

Alain

**VEDDER PRICE®**

**Alain Villeneuve**

Shareholder/Solicitor

T: +1 (312) 609 7745 | F: +1 (312) 609 5005

M: +1 (312) 404 1569

[avilleneuve@vedderprice.com](mailto:avilleneuve@vedderprice.com)

Assistant: Eileen Sosnicki, +1 (312) 609 7781

**Vedder Price P.C.**

222 North LaSalle Street

Chicago, Illinois 60601

Chicago | New York | Washington, DC | London

[www.vedderprice.com](http://www.vedderprice.com)

---

**From:** Arciniega, Jorge [<mailto:jarciniega@mwe.com>]  
**Sent:** Sunday, June 21, 2015 10:20 AM  
**To:** Villeneuve, Alain  
**Cc:** Beiser, Robert S.; Hourizadeh, Ellie  
**Subject:** RE: Univision/Unimundo: Revised Settlement Agreement

Dear Alain

Attached is the new clean version and a comparison version showing the changes made after our call this past week. I hope you will be happy that our client accepted most of your proposed changes. We cannot agree to limit the agreement's applicability to the USA. Dealing with you and your client has been a singular experience; we want to keep it that way.

**Jorge Arciniega**  
Partner

**McDermott  
Will & Emery**

McDermott Will & Emery LLP | 2049 Century Park East, 38th Floor | Los Angeles, CA 90067-3218  
Tel +1 310 551 9306 | Fax +1 310 277 4730

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**From:** Villeneuve, Alain [<mailto:avilleneuve@vedderprice.com>]  
**Sent:** Friday, June 19, 2015 1:08 PM  
**To:** Arciniega, Jorge  
**Cc:** Beiser, Robert S.; Hourizadeh, Ellie  
**Subject:** RE: Univision/Unimundo: Revised Settlement Agreement

Jorge,

Any new when your client will get around to this matter?

Alain

**VEDDER PRICE®**

**Alain Villeneuve**

Shareholder/Solicitor

T: +1 (312) 609 7745 | F: +1 (312) 609 5005

M: +1 (312) 404 1569

[avilleneuve@vedderprice.com](mailto:avilleneuve@vedderprice.com)

Assistant: Eileen Sosnicki, +1 (312) 609 7781

**Vedder Price P.C.**

222 North LaSalle Street

Chicago, Illinois 60601

Chicago | New York | Washington, DC | London

[www.vedderprice.com](http://www.vedderprice.com)

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**From:** Arciniega, Jorge [<mailto:jarciniega@mwe.com>]  
**Sent:** Wednesday, June 17, 2015 6:23 PM  
**To:** Villeneuve, Alain  
**Cc:** Beiser, Robert S.; Hourizadeh, Ellie  
**Subject:** RE: Univision/Unimundo: Revised Settlement Agreement

Dear Alain

I've incorporated into the settlement many of the points you requested during our call yesterday. I've sent the new draft to Univision (not Unimundo ☺) and am waiting for their OK for me to release the draft to you. I think we are getting there.

**Jorge Arciniega**

Partner

McDermott Will & Emery LLP | 2049 Century Park East, 38th Floor | Los Angeles, CA 90067-3218

Tel +1 310 551 9306 | Fax +1 310 277 4730

---

**From:** Villeneuve, Alain [<mailto:avilleneuve@vedderprice.com>]

**Sent:** Monday, June 15, 2015 11:22 AM

**To:** Hourizadeh, Ellie

**Cc:** Beiser, Robert S.; Arciniega, Jorge

**Subject:** RE: Univision/Unimundo: Revised Settlement Agreement

Ms. Hourizadeh,

Our client was (and remains) interested in a settlement along the lines articulated in your initial proposal. We initially offered a revised settlement agreement and it was rejected without even addressing it. The recent proposed settlement agreement introduces many new concepts which were previously undiscussed and therefore need careful analysis. As we have tried and failed to explain, there are two outstanding issues, the first is the requested elements, and the most important second is our fear that if and when we agree on any additional terms, a new third generation of elements will appear and we will find ourselves back in the current predicament.

I will try to get back to you in a day or two. As for the actions in District Court, I fear my client makes a very good point. Not only is the venue choice wrong, but you are forcing a Court to compel a response to written questions when in fact I (as this client's attorney) have asked several times for these questions to be provided to me. I do not understand why you would refuse to provide these questions while pushing the District action.

Sincerely,

Alain

**VEDDER PRICE®**

**Alain Villeneuve**

Shareholder/Solicitor

T: +1 (312) 609 7745 | F: +1 (312) 609 5005

M: +1 (312) 404 1569

[avilleneuve@vedderprice.com](mailto:avilleneuve@vedderprice.com)

Assistant: Eileen Sosnicki, +1 (312) 609 7781

**Vedder Price P.C.**

222 North LaSalle Street

Chicago, Illinois 60601

Chicago | New York | Washington, DC | London

[www.vedderprice.com](http://www.vedderprice.com)

---

**From:** Hourizadeh, Ellie [<mailto:ehourizadeh@mwe.com>]

**Sent:** Monday, June 15, 2015 12:35 PM

**To:** Villeneuve, Alain  
**Cc:** Beiser, Robert S.; Arciniega, Jorge  
**Subject:** RE: Univision/Unimundo: Revised Settlement Agreement

Mr. Villeneuve:

We have not received any response from your client to the revised settlement agreement. This, in combination with your client's recently filed motion for reconsideration in the federal matter, leads us to assume that your client is not interested in settling this matter. Is our assumption correct? Please advise. Thank you.

**Ellie Hourizadeh**

Partner

McDermott Will & Emery LLP | 2049 Century Park East, 38th Floor | Los Angeles, CA 90067-3218

Tel +1 310 551 9321 | Fax +1 310 277 4730

\*\*\*\*\*  
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Vedder Price P.C. is affiliated with Vedder Price LLP, which operates in England and Wales and with Vedder Price (CA), LLP which operates in California.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of August, 2015, I served a true and correct copy of the foregoing REQUEST FOR TRIAL & GRANT OF ATTORNEY WITHDRAWAL on the attorney for the Petitioner at the address indicated below by depositing said document in the United States mail, first-class postage prepaid and via electronic mail:

Ellie Hourizadeh  
MCDERMOTT WILL & EMERY LLP  
2049 Century Park East, 38th Floor  
Los Angeles, CA 90067-3208  
Telephone: (310) 551-9321  
Facsimile: (310) 277-4730  
Attorney for Applicant

Respectfully submitted,

UNIMUNDO CORP DBA UNIMUNDOTV

Dated: August 12, 2015

By: /s/ Alain Villeneuve  
By One of Its Attorneys

Alain Villeneuve  
Vedder Price P.C.  
222 North LaSalle Street  
Suite 2600  
Chicago, Illinois 60601-1003  
T: +1 (312) 609-7500