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

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| Proceeding | 91160143 |
| Party | Plaintiff AT&T CORP. AT&T CORP. , |
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AT&T CORP.,

Opposer,

vs.

AMERICAAT.COM, LLC

Applicant.

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Opposition No.: 91160143

Serial No.: 76/176,902

**OPPOSER AT&T CORP.'S MOTION AND BRIEF TO DEEM ADMISSIONS TO BE
ADMITTED OR ALTERNATIVELY TO ORDER APPLICANT TO ANSWER
OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS**

TABLE OF CONTENTS

I. GROUND FOR RELIEF 4

 A. AFTER REPEATED NOTICES, APPLICANT HAS FAILED TO RESPOND TO OPPOSER’S FIRST SET OF REQUESTS FOR ADMISSIONS 4

 B. OPPOSER HAS MET ITS BURDEN UNDER 37 C.F.R. 2.120 (H) TO CONFER WITH APPLICANT PRIOR TO BRINGING THIS MOTION..... 4

II. BACKGROUND OF DISCOVERY CONTROVERSY 5

III. ARGUMENT 8

 A. NATURE AND STAGE OF THE PROCEEDINGS 8

 B. APPLICANT HAS FAILED TO COMPLY WITH RULE 36 BY FAILING TO RESPOND TO OPPOSER’S DISCOVERY REQUESTS AND HAS DEMONSTRATED A PATTERN OF BLATANT DISREGARD FOR OPPOSITION PRACTICE AND PROCEDURE..... 9

 C. IN VIEW OF APPLICANT’S FAILURE TO RESPOND TO DISCOVERY REQUESTS, THE BOARD SHOULD DEEM THE ADMISSIONS ADMITTED AND SHOULD NOT RELIEVE APPLICANT FROM THE CONCLUSIVE EFFECT OF THE DEEMED ADMISSIONS 11

IV. CONCLUSION..... 12

TABLE OF AUTHORITIES

CASES

In re E.I. du Pont de Nemours Co.
476 F.2d (BNA) 1357, 177 U.S.P.Q. (BNA) 563 (C.C.P.A. 1973)..... 9

Kalis v. Colgate-Palmolive Co.
231 F.3d 1049 (7th Cir. 2000) 11

National Hockey League v. Metropolitan Hockey Club, Inc.
427 U.S. 639 (1976)..... 12

Pack v. South Carolina Wildlife and Marine Res. Dep't
92 F.R.D. 22 (D. S.C. 1981) 10

Regent Baby Prods, Corp. v. Dundee Mills, Inc.
199 U.S.P.Q. 571, 573 (T.T.A.B. 1978) 12

Unicut Corp. v. Unicut, Inc.
222 U.S.P.Q. 341 (T.T.A.B. 1984) 10, 11

Watercare Corp. v. Midwesco-Enters., Inc.
171 U.S.P.Q. 696 (T.T.A.B. 1971) 11

OTHER AUTHORITIES

37 C.F.R. § 2.120..... 4, 11

Advisory Committee Notes to the 1970 Amendment of Fed. R. Civ. P. 36(a) 9

T.B.M.P. § 524.02..... 4

T.B.M.P. § 527.01..... 11

RULES

Fed. R. Civ. P. 36..... 4, 9, 11

Fed. R. Civ. P. 37..... 11, 12, 15

I. GROUND FOR RELIEF

A. AFTER REPEATED NOTICES, APPLICANT HAS FAILED TO RESPOND TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS

Opposer AT&T Corp. ("Opposer") hereby moves the Trademark Trial and Appeal Board for an order that the matters set forth in Opposer's First Set of Requests for Admissions are deemed admitted and are to be taken as conclusively established under Rule 36(a) of the Federal Rules of Civil Procedure. Under the Rule, requests for admissions may be deemed admitted if the responding party has not served written answers and/or objections within 30 days of service of the requests. Applicant has provided no response to Opposer's First Set of Requests for Admissions served on September 19, 2006. This failure to respond comes after repeated notices to Applicant that the response time had lapsed. Opposer requests the Board deem that the matters stated in Opposer's First Set of Requests for Admissions are conclusively established or order Applicant to answer Opposer's First Requests for Admissions. Alternatively, Opposer requests that the Board impose the sanction of dismissal of the Opposition against Applicant. Applicant's Brief in support of its Motion embodied herein. Pursuant to 37 C.F.R. § 2.120(h) and T.B.M.P. § 524.02, a full copy of Opposer's First Set of Request for Admissions is attached as Exhibit A.

B. OPPOSER HAS MET ITS BURDEN UNDER 37 C.F.R. 2.120 (H) TO CONFER WITH APPLICANT PRIOR TO BRINGING THIS MOTION

Opposer has met its burden under 37 C.F.R. § 2.120 (h) and TBMP § 524.02 in a good faith effort to resolve the matters in dispute with Applicant. On December 19, 2006 Opposer's counsel corresponded with Applicant's representative, Mr. Chuck Haifley, forwarding a courtesy copy of Opposer's First Set of Requests for Admissions, First Set of Interrogatories and First Requests for Production of Documents. These requests were initially served September 19, 2006

on Applicant, with responses due October 24, 2006. Opposer requested that Applicant respond to its correspondence by December 27, 2006.¹ Receiving no response, on December 28, 2006 Opposer's counsel again sent a correspondence to Mr. Haifley inquiring about these discovery requests and notifying Applicant that Opposer would contact the Trademark Trial and Appeal Board on or after January 4, 2007, if responses were received.² Applicant responded by facsimile on December 29, 2006 stating Applicant "fully intended to defend our position in this matter" and that he had already asked new counsel to contact Opposer "immediately" and would instruct counsel "again" to contact Opposer by January 2, 2007.³ Applicant did not identify its new counsel or provide any means by which Opposer could contact its new counsel directly. Opposer has not received any further communications from Applicant or Applicant's counsel.

II. BACKGROUND OF DISCOVERY CONTROVERSY

The following actions taken by Applicant establish a pattern of complete disregard for the rules of discovery which Applicant has used to delay and preclude discovery in this Opposition.

1. Opposer filed this Notice of Opposition on April 7, 2004. Opposer and Applicant (the "Parties") entered into settlement discussions soon thereafter and stipulated to a suspension of proceedings until December 16, 2004 at which time Applicant's Answer would be due.

2. On March 4, 2005 Applicant's counsel Santoro, Driggs, Walch, Kearney, Johnson & Thompson notified Opposer that it had withdrawn as counsel "as of at least January 31, 2005."⁴

3. A Notice of Default was entered by the Board on January 26, 2006.⁵

¹ A copy of Opposer's correspondence is attached as Exhibit B, App. 13.

² A copy of Opposer's correspondence is attached as Exhibit C, App. 14.

³ A copy of Applicant's correspondence is attached as Exhibit D, App. 15.

⁴ A copy of Applicant's correspondence is attached as Exhibit E, App. 16.

⁵ A copy of the Notice of Default is attached as Exhibit F, App. 17.

4. On February 23, 2006, Opposer received an email from Applicant's new counsel Ellsworth, Moody & Benson indicating that Applicant wished to reopen settlement negotiations.⁶

5. Applicant's Motion to Set Aside Default Judgment was entered on February 24, 2006. Opposer agreed to an extension of time to allow Applicant to file its Answer on or before July 19, 2006 and to serve discovery thereafter.

6. Opposer served its First Set of Requests for Admissions to Opposer on September 19, 2006.⁷

7. On September 21, 2006, the Parties agreed by telephone conference to a 90 day extension of time for Applicant to respond to discovery, during which discussion Applicant's attorney informed Opposer that Applicant's counsel would be moving to withdraw as Applicant's counsel.

8. On October 23, 2006, the day responses to Opposer's Requests for Admissions were due, Opposer received an e-mail from Applicant's counsel requesting an additional week in which to respond giving as a reason that he was waiting for responses from his client, and because "several issues behind the scenes" may resolve the opposition "without the need for further litigation."⁸ Opposer agreed to Applicant's request for a one week extension but responses were not served within the agreed period.

9. On October 24, 2006, Applicant filed "Applicant's Answer to Opposer's Memorandum of Opposition To Applicant's Application for Specific Trademark Protection."⁹ This pro se submission does not in any way respond to Opposer's Requests for Admissions, and

⁶ A copy of Applicant's correspondence attached is as Exhibit G, App. 18.

⁷ A copy of Opposer's First Set of Requests for Admissions is attached as Exhibit A, App. 1-12.

⁸ A copy of Applicant's email is attached as Exhibit H, App. 19.

⁹ A copy of Applicant's Answer to Opposer's Memorandum of Opposition To Applicant's Application for Specific Trademark Protection is attached as Exhibit I, App. 20-34.

does not specifically admit or deny admissions as required by the Rules. Opposer was not served with this pleading, but rather located it on November 30, 2006, when it reviewed the T.T.A.B. website to update its docket.

10. When Opposer became aware of Applicant's pleading styled "Applicant's Answer to Opposer's Memorandum of Opposition To Applicant's Application for Specific Trademark Protection", Opposer called Applicant's counsel to determine if it still represented Applicant. By e-mail dated November 30, 2006, Applicant's now former counsel, Ellsworth, Moody & Bennion, notified Opposer that it no longer represented Applicant and that Opposer should speak directly to Applicant's representative, Mr. Chuck Haifley.¹⁰

11. On December 19, 2006 Opposer's counsel corresponded with Applicant's representative, Mr. Haifley, forwarding a courtesy copy of Opposer's First Set of Requests for Admissions, First Set of Interrogatories and First Requests for Production of Documents¹¹. These requests were initially served September 19, 2006 on Applicant, with responses due October 24, 2006. Opposer requested that Applicant respond to its correspondence by December 27, 2006.

12. Receiving no response, on December 28, 2006, Opposer's counsel again sent a correspondence to Mr. Haifley inquiring about these discovery requests and notifying Applicant that Opposer would contact the Trademark Trial and Appeal Board on or after January 4, 2007, if no response was received.¹²

13. Applicant responded by facsimile on December 29, 2006 stating Applicant "fully intended to defend our position in this matter" and that he had already asked new counsel to

¹⁰ A copy of Applicant's email is attached as Exhibit J, App. 35.

¹¹ A copy of Opposer's correspondence is attached as Exhibit B, App. 13.

¹² A copy of Opposer's correspondence is attached as Exhibit C, App. 14.

contact Opposer “immediately” and would instruct counsel “again” to contact Opposer by January 2, 2007.¹³ Opposer has not received any response from Applicant nor has it been notified of the identity of Applicant’s new counsel.

This Motion that Opposer’s Admissions be deemed admitted or to Order Applicant to answer Opposer’s Admissions is required by Applicant’s continued refusal to respond to Opposer’s discovery requests.

III. ARGUMENT

A. NATURE AND STAGE OF THE PROCEEDINGS

Opposer filed this Notice of Opposition against Applicant based upon Applicant’s intent-to-use trademark application, Serial No. 76/176,902 for registration of the mark AT.TV (“Applicant’s mark”) in International Class 35 filed on December 5, 2000. Opposer bases its opposition on a family of AT&T marks (“Opposer’s Marks”) which have been used continuously in connection with a wide variety of telecommunications goods and services since at least as early as August 20, 1983. Opposer’s Marks have obtained widespread fame and recognition as a highly distinctive designation of the source or origin of Opposer’s goods and services. Applicant’s Mark is confusingly similar to Opposer’s Marks and will be marketed and sold through the same and/or similar channels of commerce to the same and/or similar purchasers. Applicant’s Mark so resembles Opposer’s Marks as to be likely to cause confusion, or to cause mistake, or to deceive, and is likely to lead others to believe that the services offered are in some way associated with, sponsored by, endorsed by, or related to, Opposer and its goods or services.

¹³ A copy of Applicant’s correspondence is attached as Exhibit D, App. 15.

Concurrently with this motion, Opposer files a Motion to Compel Answers to Interrogatories and Requests for Production of Documents. The discovery period closes January 22, 2007.

B. APPLICANT HAS FAILED TO COMPLY WITH RULE 36 BY FAILING TO RESPOND TO OPPOSER'S DISCOVERY REQUESTS AND HAS DEMONSTRATED A PATTERN OF BLATANT DISREGARD FOR OPPOSITION PRACTICE AND PROCEDURE

Applicant has failed to comply with the explicit requirements of Rule 36(a) of the Federal Rules of Procedure. Over two-years have elapsed since the filing of Opposer's Notice of Opposition and during that time Applicant's non-responsiveness and seemingly purposeful inability to retain counsel has needlessly delayed this Opposition. Applicant's failure to respond thwarts the purpose of the Rule which is to facilitate proof and narrow the issues for resolution.

Rule 36(a) of the Federal Rules of Civil Procedure provides as follows:

The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder.

The Advisory Committee Notes to the 1970 Amendment of Rule 36(a) explains that:

Rule 36 serves two vital purposes, both of which are designed to reduce trial time. Admissions are sought, first to facilitate proof with respect to issues that cannot be eliminated from the case, and secondly, to narrow the issues by eliminating those that can be.

Opposer's Requests for Admissions seek Applicant's admission or denial of facts relating to likelihood of confusion of Applicant's Mark and Opposer's Marks. Opposer believes that it will be damaged by registration of Applicant's Mark. The Court of Customs and Patent Appeals in *In re E.I. du Pont de Nemours Co.*, 476 F.2d (BNA) 1357, 1361, 177 U.S.P.Q. (BNA) 563, 567 (C.C.P.A. 1973), set forth thirteen factors to be considered in determining whether a

likelihood of confusion might exist, and “[e]ach may from case to case play a dominant role.” *Id.* at 567. The factors relevant to this opposition are confusion as to sight, sound, appearance and connotation; overlap of goods and services sold under the marks; marketing of services in the same channels of trade and to the same or similar purchasers; and likelihood that others will mistakenly believe the marks originate, are sponsored by or endorsed by Opposer. *Id.* Opposer’s First Requests for Admissions are directed to Applicant’s knowledge of these facts.

The facts available are uniquely in Opposer’s possession and Opposer must be in a position to either admit or deny the requests. Opposer has apparently not undertaken a reasonable inquiry into its own files to ascertain the requested information which should be readily obtainable by it. Advisory Committee Notes to the 1970 Amendment of Rule 36(a) provides that:

The rule as revised adopts the majority view, as in keeping with a basic principle of the discovery rules that a reasonable burden may be imposed on the parties when its discharge will facilitate preparation for trial and ease the trial process. . . . The revised rule requests only that the answering party make reasonable inquiry and secure such knowledge and information as are readily obtainable by him.

Change of counsel does not excuse Applicant from its obligation to respond to Opposer’s discovery requests. Clearly, the fact that Applicant has changed counsel several times during this opposition does not negate its discovery obligations. To the contrary, the appearance of changing counsel may itself be evidence of Applicant’s pattern to evade discovery. *See Unicut Corp. v. Unicut, Inc.*, 222 U.S.P.Q. 341, 344 (T.T.A.B. 1984) (respondent’s involvement with four attorneys in proceeding, two of which withdrew in part because of respondent’s failure to communicate, was indicative of pattern to evade discovery). Even if Applicant could be characterized as having appeared as a *pro se* litigant in this proceeding, it must still meet certain standards, including a good faith attempt to comply with the rules of discovery. *See Pack v.*

South Carolina Wildlife and Marine Res. Dep't, 92 F.R.D. 22, 25 (D. S.C. 1981) (while *pro se* litigants may not be held to the same standards as a member of the Bar, they must nevertheless meet certain standards, including a good faith effort to comply with the rules of discovery.) Opposer has given Applicant every opportunity to respond, agreeing to at least two extensions of time in which to respond, and granting further informal extensions. Opposer's Motion should be granted in light of Applicant's failure to respond after Opposer's repeated efforts to accommodate Applicant.

C. IN VIEW OF APPLICANT'S FAILURE TO RESPOND TO DISCOVERY REQUESTS, THE BOARD SHOULD DEEM THE ADMISSIONS ADMITTED AND SHOULD NOT RELIEVE APPLICANT FROM THE CONCLUSIVE EFFECT OF THE DEEMED ADMISSIONS

Rule 36 of the Federal Rules of Civil Procedure does not require the filing of a motion to test the sufficiency of a request for admissions if a responding party fails to serve timely responses. The admission occurs automatically without need of seeking a court order. *Kalis v. Colgate-Palmolive Co.*, 231 F.3d 1049, 1059 (7th Cir. 2000). Thus, this Board should deem the admissions to be admitted.

Because the courts have the discretion to relieve parties from conclusive effects of deemed admissions, a party in the position of Opposer can request that the Board rule on whether it will excuse the deemed admissions in order that Opposer may rely on the admissions in trial preparation. Fed. R. Civ. P. 36(b); *see also Watercare Corp. v. Midwesco-Enters., Inc.*, 171 U.S.P.Q. 696, 698 (T.T.A.B. 1971). The usual course is for Opposer to test the sufficiency of the response and for the Board to deem the requests admitted or alternatively order Applicant to serve answers. A further failure by Applicant to serve answers entitles Opposer to move for sanctions in the form of deemed admissions and entry of judgment pursuant to 37 C.F.R.

2.120(b)(1), 2.120(g)(1) and Fed. R. Civ. P. 37(b)(2). *Id.* See also *Unicut Corp. v. Unicut, Inc.*, 222 U.S.P.Q. at 344 and T.B.M.P. § 527.01.

In view of the facts in this case, and the long delay that has occurred because of Applicant's actions, the Board should not relieve Applicant from the conclusive effect of the deemed admissions. Indeed, this is a case where the Board should consider imposing the sanction of dismissal of this Opposition against Applicant. See *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 642-643 (1976) (finding District Court did not abuse its discretion in imposing the sanction of dismissal against respondent under Fed. R. Civ. P. 37 based upon respondent's flagrant bad faith in responding to discovery requests). The Board has inherent authority to control the disposition of cases on its docket and to deter similar tactics by others in deeming admissions in this case. See *Regent Baby Prods, Corp. v. Dundee Mills, Inc.*, 199 U.S.P.Q. 571, 573 (T.T.A.B. 1978) (wherein the Board entered a judgment of default against party which failed to take any action within the time to respond to requests for admissions, or to respond to motions to compel production of documents or response to interrogatories).

IV. CONCLUSION

For the reasons stated above, Applicant moves the Trademark Trial and Appeal Board to deem Opposer's First Request for Admissions to be established as admitted based on its inherent authority to do so. Alternatively, Applicant moves that the Board Order Applicant to respond to Opposer's Requests for Admissions.

Respectfully submitted,

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ATTORNEYS FOR OPPOSER
AT&T CORP.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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AT&T CORP.,

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vs.

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Opposition No.: 91160143
Serial No.: 76/176,902

ORDER

This cause has come before this Court upon Opposer AT&T Corp.'s Motion And Brief To Deem Admissions To Be Admitted Or Alternatively To Order Applicant to Answer to Opposer's Requests For Admissions. The Court, having considered the parties' submissions, finds that Applicant's request is warranted.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED that the admissions in Opposer's First Request for Admissions served herein are hereby deemed admitted.

ORDERED this the _____ day of _____, 2007.

United States Patent and Trademark Office
Trademark Trial and Appeal Board

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. Civ. P. 37(a)(2)(A), I hereby certify that Opposer's counsel contacted Applicant by correspondence dated December 19, 2006 and December 29, 2006, enclosing a courtesy of Opposer's First Set of Requests for Admissions for Applicant's review, and asking Applicant to respond to these Requests for Admissions. Applicant has failed to respond or give any justification for failing to do so.



Charles S. Cotropia

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **OPPOSER AT&T CORP.'S MOTION AND BRIEF TO DEEM ADMISSIONS TO BE ADMITTED OR ALTERNATIVELY TO ORDER APPLICANT TO ANSWER OPPOSER'S FIRST REQUESTS FOR ADMISSIONS** is being served on January 19, 2007, by delivery via Federal Express to Chuck Haifley, 2250 East Tropicana, #449, Las Vegas, Nevada 89119, representative for Applicant.



Charles S. Cotropia

AT&T CORP. V. AMERICAAT.COM, LLC
OPPOSITION NO. 91160143

OFFERED BY OPPOSER, AT&T CORP.

EXHIBIT A

C. If you object to any of these requests for admission, you must state each reason for the objection.

DEFINITIONS

A. "Applicant" shall mean the named Applicant, as well as, both collectively and severally, each division, subsidiary, parent or affiliated corporation or partnership of Applicant, any representative, agent or person acting or purporting to act on behalf of each such entity, and any predecessors or successors of any of them (or predecessors or successors of the property which is the subject matter of this litigation). The term "Applicant" shall also include any licensees of the named Applicant.

B. "Applicant's Mark" shall mean AT.TV, the mark the subject of Trademark Application No. 76/176,902.

C. "Applicant's Services" shall mean services identified in Applicant's Trademark Application No. 76/176,902 for AT.TV.

D. "Opposer" shall mean, the named Opposer, as well as, both collectively and severally, each division, subsidiary, parent or affiliated corporation or partnership of Opposer, any representative, agent, and/or person acting or purporting to act on behalf of each such entity, and any predecessors or successors of any of them (or predecessors or successors of the property which is the subject matter of this litigation). The term "Opposer" shall also include any past or present licensee(s) of the named Opposer.

E. "Opposer's Marks" shall mean those marks identified and attached as Exhibit A to the Notice of Opposition filed herein.

F. "Opposer's Goods and Services" shall mean those goods and services described in Opposer's applications and registrations attached as Exhibit A to the Notice of Opposition filed herein.

REQUEST FOR ADMISSION

Request No. 1: Applicant has not used Applicant's Mark in intrastate commerce.

Request No. 2: Applicant has not used Applicant's Mark in U.S. interstate commerce.

Request No. 3: Applicant has not used Applicant's Mark in U.S. international commerce.

Request No. 4: Applicant has not used Applicant's Mark in intrastate commerce prior to July 31, 1983.

Request No. 5: Applicant has not used Applicant's Mark in U.S. interstate commerce prior to July 31, 1983.

Request No. 6: Applicant has not used Applicant's Mark in U.S. international commerce prior to July 31, 1983.

Request No. 7: Opposer is the owner of Opposer's Marks.

Request No. 8: Each of Opposer's Marks include the term "AT&T".

Request No. 9: Applicant's Mark is "AT.TV".

Request No. 10: Applicant's Mark includes the letters A, T and T.

Request No. 11: Applicant's Mark includes all the letters included in Opposer's Marks.

Request No. 12: Applicant's Mark includes the letters A, T and T included in Opposer's Marks in the same order as they appear in Opposer's mark.

Request No. 13: Opposer has continuously distributed, marketed and sold its family of telecommunications products and services since at least as early as July 31, 1983.

Request No. 14: Applicant's services as identified in its pending service mark application are catalog-ordering and retail store services on and through a global computer network featuring apparel, business accessories, computer products, electronic equipment, automobile accessories, gift items, collectable items, house wares, home-furnishings, personal-hygiene products, health-care products, fitness products, food items, pet accessories, travel accessories, seasonal items, gift-certificates and other general merchandise, consumer electronics, home entertainment, digital video discs, high definition digital video discs, fluorescent multilayer discs, digital video disc players, digital video disc-read only memory, digital video disc recorders, high fidelity stereo systems, compact disc players, cassette tape players/recorders, receivers, speakers, equalizers, home theater systems, portable stereo systems, portable radio/cassette systems, personal compact disc players, personal radio cassette players, headphone radios, radios, clock radios, tape recorders, micro-cassette recorders, car compact disc players, car radio cassette players, car speakers, car amplifiers, car equalizers, car crossovers, cellular phones, camcorders, video cassette recorders, combination television/video cassette recorders, video editing components and systems, audio-video mixers, video special effects generators, laser disc players, video printers, character generators, televisions, high definition televisions, direct view television, projection television, digital sound system satellite systems, web television products, pagers, headphones, microphones, video tapes, audio tapes, direct cable connection play rack adapters, video batteries, batteries, telephones, cordless telephones, answering machines, telephone systems, video teleconferencing systems, voice process systems, facsimile products, personal digital assistants and photographic equipment and accessories, motorized racing vehicles, automobiles, trucks, motorcycles, boats, watercraft, jet skis, aircraft, snowmobiles, motorized racing vehicle equipment, parts and accessories, sporting goods, athletic equipment,

health equipment, fitness products, sportswear, underwear, sports publications and sports accessories, telephones, cellular phones, digital phones, cordless telephones, answering machines, telephone systems, video teleconferencing systems, voice process systems, facsimile products, personal digital assistants, pagers, headphones, telephony systems, microphones, audio tapes and batteries, medical technology, medical forms, hospital apparel, medical supplies, health products, health equipment, medical publications, health publications, fitness publications and hospital accessories, legal technology, legal forms, research techniques, textbooks, periodical newspapers and magazines in the field of consumer electronics, sports, health, medicine and the law, legal information, on-line tax and accounting information, and online citation services; dissemination of advertisements for the goods and services of others on and through a global computer network.

Request No. 15: Opposer owns a U.S. federal registration for the mark “AT&T” for services that cover “local, long distance, and international voice, text, facsimile, video and data telecommunications.”

Request No. 16: Opposer owns a U.S. federal registration for the mark “AT&T” for services that cover “frame relay telecommunications services.”

Request No. 17: Opposer owns a U.S. federal registration for the mark “AT&T” for goods that cover “cellular telephone communication goods and services.”

Request No. 18: Opposer owns a U.S. federal registration for the mark “AT&T” for services that cover “electronic mail and voice mail and messaging services.”

Request No. 19: Opposer owns a U.S. federal registration for the mark “AT&T” for services that cover “virtual network telecommunications services.”

Request No. 20: Opposer owns a U.S. federal registration for the mark “AT&T” for services that cover “audio and video teleconferencing services, providing telecommunications connections to world wide global computer networks.”

Request No. 21: Opposer owns a U.S. federal registration for the mark “AT&T” for services that cover “satellite transmission services.”

Request No. 22: Opposer owns a U.S. federal registration for the mark “AT&T” for services that cover “the transmission over cable of television programs and radio programs.”

Request No. 23: Opposer owns a U.S. federal registration for the mark “AT&T” for services that cover “terrestrial and undersea telecommunications links.”

Request No. 24: Opposer owns a U.S. federal registration for the mark “AT&T” for services that cover “800 telecommunications services and 900 telecommunications services.”

Request No. 25: Opposer owns a U.S. federal registration for the mark “AT&T” for goods that cover “printed materials, namely toll-free telephone directories.”

Request No. 26: Opposer owns a U.S. federal registration for the mark “AT&T” for services that cover “telecommunications network support services, namely, repairing and maintenance.”

Request No. 27: Opposer owns a U.S. federal registration for the mark “AT&T” for goods that cover “telecommunications software, telecommunications hardware, namely transponders, telephones, telephone systems, comprised of a handset and console unit with console features, cordless telephones, speakerphones, modems, speakers, and related products.”

Request No. 28: Opposer owns a U.S. federal registration for the mark “AT&T” for services described as “providing access services to global computer information networks, on-line services and bulletin boards; providing access to an interactive computer data base in the fields of weather, sports, health, financial information, hobbies, news, education, recreation,

transportation, nature self-improvement government affairs, home management, literature, shopping, international affairs, travel style and business and local information; providing an interactive data base in the fields of weather, sports, health, financial information, hobbies, news, education, recreation, transportation, nature, self-improvement, government affairs, home management, literature, shopping, international affairs, travel style and business and local information.”

Request No. 29: Opposer owns a U.S. federal registration for the mark “AT&T” for goods that cover “key rings not made of precious metals.”

Request No. 30: Opposer owns a U.S. federal registration for the mark “AT&T” for goods that cover “emergency first aid kit consisting primarily of pharmaceutical preparations and bandages as well as emergency road flairs and defogging-compound wipes.”

Request No. 31: Opposer owns a U.S. federal registration for the mark “AT&T” for goods that cover “towels and blankets.”

Request No. 32: Opposer owns a U.S. federal registration for the mark “AT&T” for goods that cover “flashlights.”

Request No. 33: Opposer owns a U.S. federal registration for the mark “AT&T” for goods that cover “identification badges.”

Request No. 34: Opposer owns a U.S. federal registration for the mark “AT&T” for goods that cover “copper cable and fiber optic cable and apparatus used to transmit and receive on a fiber optic network system.”

Request No. 35: Opposer owns a U.S. federal registration for the mark “AT&T” for goods that cover “books; note pad cases; posters; note cards; pencils; pens; pen holders; paper weights; non-graduated rulers; telephone index cards; letter openers; calendars.”

Request No. 36: Opposer owns a U.S. federal registration for the mark “AT&T” for goods that cover “sporting equipment, namely golf tees, and golf balls; toys, namely stuffed animals and balloons.”

Request No. 37: Opposer owns a U.S. federal registration for the mark “AT&T” for goods that cover “clothing, namely caps, sun visors, sweaters, t-shirts, shirts, jogging suits, sweatshirts, jackets and rain slickers.”

Request No. 38: Opposer owns a U.S. federal registration for the mark “AT&T” for goods that cover “pocket calculators, hand-held security alarms, miniature transistor radios, tire gauges, magnifiers and measuring tapes.”

Request No. 39: Opposer owns a U.S. federal registration for the mark “AT&T” for goods that cover “pocket knives and hand-held ice scrapers.”

Request No. 40: Opposer owns a U.S. federal registration for the mark “AT&T” for goods that cover “clocks.”

Request No. 41: Opposer owns a U.S. federal registration for the mark “AT&T” for goods that cover “luggage tags made of leather, umbrellas, all-purpose sports bags, tote bags, leather business portfolio-type brief cases, and vinyl business card cases.”

Request No. 42: Opposer owns a U.S. federal registration for the mark “AT&T” for goods that cover “shoe brushes, drinking glasses and mugs, coasters, and insulated containers, namely soda carrying cases, thermally insulated bottles, and coolers, and drinking cup inserts for use with insulated beverage can holders.”

Request No. 43: Opposer owns a U.S. federal registration for the mark “AT&T” for goods that cover “pocket mirrors and picture frames.”

Request No. 44: Opposer owns a U.S. federal registration for the mark “AT&T” for services that cover “credit card services for telecommunications purposes.”

Request No. 45: Applicant’s Services are related to Opposer’s services.

Request No. 46: Applicant’ Services include sales of goods related to Opposer’s goods.

Request No. 47: Applicant’s Services are targeted to consumers interested in purchasing goods through a telecommunications and global computer information network.

Request No. 48: Applicant’s Services will be provided through telecommunications, and global computer information networks delivered via telephony, cable and digital transceivers.

Request No. 49: Applicant’s Services are provided through telecommunications, and global computer information networks delivered via telephony, cable and digital transceivers.

Request No. 50: Applicant’s Services will be marketed via telecommunications and global computer information networks.

Request No. 51: Applicant’s Services are marketed via telecommunications and global computer information networks.

Request No. 52: Consumers would be likely to encounter Opposer’s Marks while using Applicant’s services.

Request No. 53: Consumers would be likely to use Opposer’s goods and services in order to access Applicant’s Services.

Request No. 54: Applicant’s Services are directed to consumers of Opposer’s Goods and Services.

Request No. 55: Applicant’s Services may be offered through the same channels of trade as Opposer’s Goods and Services.

Request No. 56: Consumers using Applicant's catalog ordering and retail store services on and through a global computer network may believe Applicant's Services are affiliated with, associated with or sponsored by Opposer.

Request No. 57: Use of Applicant's Mark for Applicant's Services may create a likelihood of confusion, mistake or deception with Opposer's Marks as used on Opposer's Goods and Services.

Request No. 58: Applicant selected Applicant's Mark with the knowledge that Opposer uses Opposer's Marks for Opposer's Goods and Services.

Request No. 59: Applicant selected Applicant's Mark with the awareness that its adoption and use could cause likelihood of confusion, mistake or deception with Opposer's Marks.

Request No. 60: Applicant was aware of Opposer's Marks when selecting Applicant's Mark.

Request No. 61: Opposer's Marks have acquired substantial good will and consumer recognition by virtue of Opposer's extensive and long term use of Opposer's Marks.

Request No. 62: There has been at least one case of actual confusion between Applicant's Services offered under Applicant's Mark and Opposer's Goods and Services offered under Opposer's Marks.

Respectfully submitted,



Charles S. Cotropia
Julia M. Chester
SIDLEY AUSTIN LLP
717 North Harwood, Suite 3400
Dallas, Texas 75201
Tel. 214-981-3308
Fax 214-981-3400

Alan Charles Raul
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005

ATTORNEYS FOR OPPOSER
AT&T CORP.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT has been served on Matthew W. Starley on September 19, 2006, via Federal Express to: Matthew W. Starley, 7881 W. Charleston Boulevard, Suite 210, Las Vegas, NV 89117.



Charles S. Cotropia

AT&T CORP. V. AMERICAAT.COM, LLC
OPPOSITION NO. 91160143

OFFERED BY OPPOSER, AT&T CORP.

EXHIBIT B



SIDLEY AUSTIN LLP
 717 NORTH HARWOOD
 SUITE 3400
 DALLAS, TEXAS 75201
 214 981 3300
 214 981 3400 FAX

ccotropia@sidley.com
 (214) 981-3305

| | | |
|----------|-------------|----------------|
| BEIJING | GENEVA | SAN FRANCISCO |
| BRUSSELS | HONG KONG | SHANGHAI |
| CHICAGO | LONDON | SINGAPORE |
| DALLAS | LOS ANGELES | TOKYO |
| | NEW YORK | WASHINGTON, DC |

FOUNDED 1888

December 19, 2006

Via Fax and Federal Express

Mr. Chuck Haifley
 2250 East Tropicana, #449
 Las Vegas, Nevada 89119

Re: AT&T Corp. v. Americaat.com, LLC; Opposition No. 91160143;
 Serial No. 76/176,902; Our Ref: 11456/401

Dear Mr. Haifley:

We represent AT&T Corp. (AT&T) in the above referenced opposition. I have been informed by Matthew W. Starley of Ellsworth Moody & Bennion that he and his firm no longer represent Americaat.com, LLC (Americaat.com) in this matter and that I should address any communication directly to you. If you are represented by new counsel in this matter, please notify me and I will direct this and further inquiries to your counsel.

This letter is to address outstanding discovery that was served by AT&T on Americaat.com on September 19, 2006. Copies of these discovery requests, namely Opposer's First Set of Interrogatories, Opposer's First Set of Requests for Production of Documents and Opposer's First Set of Requests for Admission to Applicant, are enclosed for your reference. Responses were due to these discovery requests thirty (30) days from the date of service or by October 24, 2006. To date, we have not received any responses to these discovery requests.

Please notify us immediately, and at least by December 27, 2006, as to the Applicant's intention regarding responses to these requests. Should you wish to discuss this matter, please contact me or have your counsel contact me immediately.

Very truly yours,

Charles S. Cotropia

CSC:ia
 Enclosure

cc: Matthew W. Starley (by fax) (w/o encl.)

AT&T CORP. V. AMERICAAT.COM, LLC
OPPOSITION NO. 91160143

OFFERED BY OPPOSER, AT&T CORP.

EXHIBIT C



SIDLEY AUSTIN LLP
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BEIJING GENEVA SAN FRANCISCO
BRUSSELS HONG KONG SHANGHAI
CHICAGO LONDON SINGAPORE
DALLAS LOS ANGELES TOKYO
NEW YORK WASHINGTON, DC

FOUNDED 1866

December 28, 2006

Via Fax and Federal Express

Mr. Chuck Haifley
2250 East Tropicana, #449
Las Vegas, Nevada 89119

Re: AT&T Corp. v. Americaat.com, LLC; Opposition No. 91160143;
Serial No. 76/176,902; Our Ref: 11456/80360

Dear Mr. Haifley:

This is in follow up to my letter to you dated December 19, 2006, regarding the above referenced matter wherein I asked that Americaat.com contact me by December 27, 2006, with regard to whether it planned to serve responses to the outstanding discovery referred to in my correspondence. A copy of my December 19 correspondence is attached for your reference.

I have not received any response from Americaat.com to my December 19 correspondence and thus assume that it will not respond to our discovery requests. We will proceed under this understanding and report the same to the Trademark Trial and Appeal Board. I will delay my contact to the Trademark Trial and Appeal Board until January 4, 2007, and ask that you contact me before that date if responses to our discovery requests will be forthcoming.

Should you have any questions regarding this matter or this request, please contact me.

Very truly yours,

Charles S. Cotropia

CSC:ia
Enclosure

AT&T CORP. V. AMERICAAT.COM, LLC
OPPOSITION NO. 91160143

OFFERED BY OPPOSER, AT&T CORP.

EXHIBIT D

AmericaAt.com

Re: AT&T Corp. v. AmericaAt.com, LLC Opposition No. 91160143
Serial No. 76/176,902

Dear Charles Cotropia

I have received your questions and have forwarded them on to new counsel. We fully intend to defend our position in this matter and I have asked that he contact you immediately upon his return from family. Unfortunately, your letter was delivered to me during the Holidays when the vast majority of people are on vacation with family. I expect to hear from him by Tuesday the 2nd of January and will again ask him to contact you directly.

Sincerely,


Chuck Hatley
702-493-9292

AT&T CORP. V. AMERICAAT.COM, LLC
OPPOSITION NO. 91160143

OFFERED BY OPPOSER, AT&T CORP.

EXHIBIT E

JOHN E. LEACH
GREGORY J. WALCH
NICHOLAS J. SANTORO
MICHAEL E. KEARNEY
J. DOUGLAS DRIGGS, JR.
RICHARD F. HOLLEY
DAVID G. JOHNSON
RONALD J. THOMPSON
JAMES E. WHITHIRE, III
STEVEN A. GIBSON
DANIEL L. SCHWARTZ
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ODONNA M. ATAMOH
JENNIFER K. CRAFT
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JENNIFER L. HARDING
BEN WEST
MICHAEL F. LYNCH
RYAN T. SCHULTZ
MICHAEL BLAKLEY
STELLA B. DORMAN
TRACY A. GALLEGOS

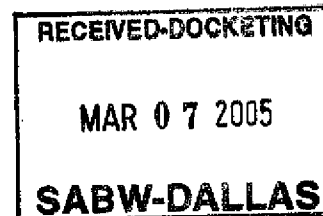
OF COUNSEL:
ANTHONY A. ZMILLA
CHARLES L. TITUS

MICHAEL C. ROWE
JAVIER A. ARGUELLO
LEE E. DAVIS
SEAN L. ANDERSON
JAMES D. BOYLE

March 4, 2005

Via E-mail, Facsimile & U.S. Mail

Elisabeth A. Evert, Esq.
Sidley, Austin, Brown & Wood
717 North Harwood, Suite 3400
Dallas, Texas 75201



RE: *Withdrawal as Counsel for AmericaAt.com, LLC*

Please be advised that as of at least January 31, 2005 our firm no longer represents AmericaAt.com, LLC with respect to any legal matters, including, without limitation, the prosecution of the applications for the following marks: AT.TV, Class 35, Serial No. 76/176,902; AT.TV, Class 41, Serial No. 76/176,901; TVAT.TV, Class 35, Serial No. 76/177,749 and TVAT.TV, Class 41, Serial No. 76/176,900. Accordingly, please forward all correspondence to and address any further negotiations with AmericaAt.com, LLC directly using the following contact information:

Ms. ShiRena Haifley
Manager
AmericaAt.com, LLC
2250 East Tropicana Boulevard, Suite 449
Las Vegas, Nevada 89119
Telephone No: (702) 598-5831

Kind regards,

SANTORO, DRIGGS, WALCH,
KEARNEY, JOHNSON & THOMPSON

Bryce K. Earl

cc: Ms. ShiRena Haifley
Steven A. Gibson, Esq.
Jennifer K. Craft, Esq.

AT&T CORP. V. AMERICAAT.COM, LLC
OPPOSITION NO. 91160143

OFFERED BY OPPOSER, AT&T CORP.

EXHIBIT F

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: January 26, 2006

Oppos91160143

AT&T CORP.

v.

AmericaAt.com, LLC

Clara Vela, Paralegal Specialist

Answer was due (as last reset) in this case on January 15, 2005. Inasmuch as it appears that no answer has been filed, nor has applicant filed a motion to further extend its time to answer, notice of default is hereby entered against applicant under Fed. R. Civ. P. 55(a).

Applicant is allowed until thirty days from the mailing date of this order to show cause why judgment by default should not be entered against applicant in accordance with Fed. R. Civ. P. 55(b).

AT&T CORP. V. AMERICAAT.COM, LLC
OPPOSITION NO. 91160143

OFFERED BY OPPOSER, AT&T CORP.

EXHIBIT G

Clark, Dusan C.

From: Kaminsky, Doreen
Sent: Friday, February 24, 2006 1:41 PM
To: Clark, Dusan C.
Subject: FW: AT.TV and AT&T
Attachments: AmAt-AT&T Consent Agreement Final ltr.pdf

For you my dear!!

From: Matt Starley [mailto:mstarley@emblaw.com]
Sent: Thursday, February 23, 2006 12:52 PM
To: dkaminsky@sidley.com
Subject: AT.TV and AT&T

Dear Ms. Kaminsky:

Thank you for returning my call. Here is the "final" draft of the agreement we were negotiating with Elizabeth Everett. My understanding is that this draft had been sent to her for her client's approval and that we were waiting to hear back from her. As I mentioned, this case was moved to our firm with a number of other cases and so I cannot be sure that this was the case. Regardless, we have been asked to reopen communications and see if we can get this thing signed. Thanks for looking into this and passing it on (if necessary).

Sincerely,

Matthew W. Starley, Esq.
 ELLSWORTH, MOODY & BENNION
 7881 W. Chareleston Blvd., Suite 210
 Las Vegas, NV 89117
 (702) 658-6100
mstarley@emblaw.com

IRS CIRCULAR 230 NOTICE

In compliance with IRS requirements, we inform you that any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties or in connection with marketing or promotional materials.

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE PARTY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination or copying of this communication is strictly prohibited. Further, please delete it from your system without copying it, and notify the sender by reply e-mail or by calling 702.658.6100, so that our address record can be corrected. Thank you.

AT&T CORP. V. AMERICAAT.COM, LLC
OPPOSITION NO. 91160143

OFFERED BY OPPOSER, AT&T CORP.

EXHIBIT H

Cotropia, Charles S.

From: Matt Starley [matt@silverstatelaw.com]
Sent: Monday, October 23, 2006 1:46 PM
To: Cotropia, Charles S.
Subject: Discovery Requests - AT&T v. AmericaAt.com

Re: In the TTAB - AT&T v. AmericaAt.com (mark: AT.TV)

Dear Mr. Cotropia:

I believe my client is due today to delivery to you our responses to your Requests for Admissions, Requests for Production of Documents and Interrogatories. I am waiting for a number of responses from my client, which he states he will have to me within the hour. Although I may finally receive the responses from my client today, I do not foresee my schedule allowing me time to prepare the response and have them to you by the end of the day. Also, there are several issues going on behind the scenes here with regard to my client, which issues I am not free to disclose at this time. However, these issues, if they come to fruition, may help us resolve this matter without the need of further litigation. For these reasons, we are requesting a one week extension on all of your discovery requests.

I would appreciate it if you could advise me of your response to our request at your earliest possible convenience. Also, I thank you in advance for any courtesy that you may extend.

Sincerely,

Matthew W. Starley, Esq.
ELLSWORTH, MOODY & BENNION
7881 W. Chareleston Blvd., Suite 210
Las Vegas, NV 89117
(702) 658-6100
Fax (702) 658-2502
matt@silverstatelaw.com

IRS CIRCULAR 230 NOTICE

In compliance with IRS requirements, we inform you that any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties or in connection with marketing or promotional materials.

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE PARTY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination or copying of this communication is strictly prohibited. Further, please delete it from your system without copying it, and notify the sender by reply e-mail or by calling 702.658.6100, so that our address record can be corrected. Thank you.

AT&T CORP. V. AMERICAAT.COM, LLC
OPPOSITION NO. 91160143

OFFERED BY OPPOSER, AT&T CORP.

EXHIBIT I

1 (hereinafter "Sub-dmains") are to be accessed.

2 6. On or about December 05, 2000, in conjunction with the
3 acquisition of internet domain names, Applicant acquired the
4 right to the domain name at.tv ("Subject Domain Name")
5 Concurrently, the Applicant filed with the USPTO for Trademark
6 protection the subject domain name along with several hundred
7 other petitions for trademark protection specific to other Sub-
8 domain names owned by the Applicant.

9 7. On or about February 19, 2002, the USPTO filed a Notice of
10 Publication for the Subject Domain Name. Per USPTO guidelines,
11 the USPTO requested public comment in response to which the
12 Opposer filed a Notice of Opposition to the Applicant's
13 request.

14 8. In response to the Notice, Applicant contacted the Opposer
15 informing the Opposer that it was the Applicant's position that
16 the objection was wholly without merit but that, in the spirit
17 of good faith, Applicant would meet with Opposer with the
18 express intent of negotiating in good faith resolve of the
19 Opposer's concerns. This arrangement required Opposer to
20 request a number of time extensions from the USPTO which said
21 requests were granted by the USPTO.

22 9. On or about September 28, 2004, after exhaustive good faith
23 negotiations, accord was reached and an Agreement was forwarded
24 to Opposer for execution. Rather than executing the Agreement,
25 a copy of which is appended hereto, marked EXHIBIT B for

Applicant Response to Opposer's Notice of Opposition - 3

1 identification and, by reference, incorporated herein, Opposer
2 summarily and unilaterally elected to terminate, in bad faith,
3 any further discussions and filed with the USPTO a Notice of
4 Opposition.

5 10. Applicant hereby respectfully responds to Opposer's
6 Notice.

7
8 AGRUMENTS

9 11. An investigation of Opposer's history of trademarks
10 reveals a total of nine hundred and eighty two (982)
11 trademarks, each of which incorporates typeface letters and
12 symbolic marks "A", "T", "&" and "T" all grouped in a specific,
13 repetitive mark as defined by the USPTO.

14 12. In objecting to the Applicants petition for trademark
15 protection, Opposer relies on a single belief to defend it's
16 position with said belief articulated fully within Paragraph 10
17 of the subject document; *"Applicant's use of the infringing*
18 *mark is likely to lead others to mistakenly believe that the*
19 *services offered in connection with Applicant's mark originate*
20 *from or are in some way associated with, sponsored, or endorsed*
21 *by, or related to, Opposer and its goods and services."*, a copy
22 of which is appended hereto, marked EXHIBIT C for
23 identification and, by reference, incorporated herein.

24 13. Respectfully, it is well-settled as a matter of law and
25 by the USPTO itself that letters of the alphabet, except when

1 used in a complete mark such as ABC Television, CBS Television,
2 NBC Television and 982 instances where the letters AT&T are
3 used as a single mark in their entirety but not the individual
4 letters are considered copyrightable as a whole, complete and
5 unique mark. In point of fact, the USPTO has repeatedly
6 articulated this conclusion citing a number of governmental
7 sources for support of such reliance not the least of which is
8 Volume 37 of the Code of Federal Regulations wherein it states,
9 clearly and unambiguously, "*The following are examples of works
10 not subject to copyright and applications for registration of
11 such works cannot be entertained:... typeface as typeface*" 37
12 CFR 202.1(e).

- 13 14. The regulation is in accordance with the House of
14 Representatives report that accompanied the copyright law, when
15 it was passed in 1976 wherein the House noted, "*The Committee
16 has considered, but chosen to defer, the possibility of
17 protecting the design of typefaces. A 'typeface' can be
18 defined as a set of letters, numbers, or other symbolic
19 characters, whose forms are related by repeating design
20 elements consistently applied in a notational system and are
21 intended to be embodied in articles whose intrinsic utilitarian
22 function is for use in composing text or other cognizable
23 combinations of characters. The Committee does not regard the
24 design of typeface, as thus defined, to be a copyrightable
25 'pictorial, graphic, or sculptural work' within the meaning of*

1 this bill and the application of the dividing line in section
2 101." H. R. Rep. No. 94-1476, 94th Congress, 2d Session at 55
3 (1976), reprinted in 1978 U.S. Cong. and Admin. News 5659,
4 5668.

5 15. In Eltra Corp. V. Ringer, 579 F.2d 294, 208 USPQ 1(1978,
6 C.A. 4, Va.), the U.S. Copyright Office held that a bitmapped
7 font is nothing more than a computerized representation of a
8 typeface, and as such is not copyrightable: "The [September 29,
9 1988] Policy Decision. [published at 53 FR 38110] based on t he
10 [October 10,] 1986 Notice of Inquiry [published at 51 FR36410]
11 reiterated a number of previous registration decisions made by
12 the [Copyright] Office. First, under existing law, typeface as
13 such is not registerable. The Policy Decision then went on to
14 state the Office's position that "data that merely represents
15 an electronic depiction of a particular typeface or individual
16 letterform' [that is, a bitmapped font] is also not
17 registerable." 57 FR 6201.

18 16. Further, a September 29, 1988 Policy Decision, published
19 at 53 FR 38110, based on the October 10, 1986 Notice of Inquiry
20 published at 51 FR 36410 reiterated a number of previous
21 registration decisions made by the Copyright Office. First,
22 under existing law, typeface as such is not registerable. The
23 Policy Decision then went on to state, "The Office's position
24 that 'data that merely represents an electronic depiction of a
25 particular typeface or individual letterform' [that is, a

1 *bitmapped font*] is also not registerable." 57 FR 6201.

2 17. In the humble opinion of the Applicant, the foregoing
3 should, inandof itself, exist as sufficient in providing
4 substantive evidence that the Opposer's objection it without
5 merit. That being said, the Applicant again notes that the
6 Opposer relies on a single allegation of "confusion" as sole
7 and singular grounds for it's objection. Again, Opposer's
8 reliance is at it's own peril.

9 18. The scope of a trademark is determined by whether there
10 is "likelihood of confusion" which is different from whether
11 there has been any actual confusion between that trademark and
12 another trademark in the minds of the consuming public.
13 Likelihood of confusion is generally determined by reviewing a
14 set list of factors which, depending on the judicial circuit,
15 range from 7 to 13 in number. In the Federal Circuit, for
16 example, these are called the *DuPont* factors which states, "We
17 determine likelihood of confusion by focusing on the question
18 whether the purchasing public would mistakenly assume that the
19 applicant's goods originate from the same source as, or are
20 associated with, the goods in the cited registrations. We make
21 that determination on a case-by-case basis aided by the
22 application of the factors set out in *In re E.I. du Pont de*
23 *Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Those
24 factors are:

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1. The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression.
2. The similarity or dissimilarity and nature of the goods described in an application or registration or in connection with which a prior mark is in use.
3. The similarity or dissimilarity of established, likely-to-continue trade channels.
4. The conditions under which and buyers to whom sales are made, i.e. "impulse" vs. careful, sophisticated purchasing.
5. The fame of the prior mark
6. The number and nature of similar marks in use on similar goods.
7. The nature and extent of any actual confusion.
8. The length of time during and the conditions under which there has been concurrent use without evidence of actual confusion.
9. The variety of goods on which a mark is or is not used.
10. The market interface between the applicant and the owner of a prior mark.
11. The extent to which applicant has a right to exclude others from use of its mark on its goods.
12. The extent of potential confusion.

1 13. Any other established fact probative of the effect
2 of use.

3
4 Id. at 1361, 177 USPQ at 567. Not all of the DuPont factors may
5 be relevant or of equal weight in a given case, and "any one of
6 the factors may control a particular case," In re Dixie Rests.,
7 Inc., 105 F.3d 1405, 1406-07, 41 USPQ2d 1531, 1533 (Fed. Cir.
8 1997)

9 19. In the instant matter, the Applicant is a producer of
10 entertainment who has secured the internet domain name at.tv,
11 without, parenthetically, objection from the Opposer in that
12 forum, together with more than one thousand (1000) Sub-domains
13 ending in at.tv. Examples of these Sub-domains are sportsat.tv,
14 newsat.tv, weatherat.tv, moneyat.tv, entertainmentat.tv,
15 moviesat.tv, videoat.tv, musicat.tv, fashionat.tv,
16 politicsat.tv. and hundreds of others.

17 20. It should be well-noted that the Opposer failed, in whole
18 and without exception, to raise issue in the securing of the
19 internet domain names with the agency responsible for approving
20 all internet domain names and fails in the instant matter to
21 raise objection to any of the other more than 1000 names
22 submitted for trademark protection with the USPTO, the vast
23 majority of which end in at.tv, and has singled out this
24 individual domain name for opposition.

25 21. Using <http://www.at.tv> as a Gateway Portal to the sub-

1 domains, the Applicant's business plan calls for selling the
2 sub-domains to specialty entertainment producers and allowing
3 vistors to reach any of the more than 1000 sub-domains via the
4 Gateway http://www.at.tv general domain. Thus, an individual
5 wishing to visit a specific site like, as an example,
6 http://www.newsat.tv would merely type in http://www.at.tv and
7 then be presented with a list of producers, each ending in
8 at.tv including http://www.newsat.tv and the other
9 aforementioned Sub-domains.

10 22. The Applicant does not engage in any of the services for
11 which the Opposer's business is known rendering the
12 aforementioned Factors numbered 1-5, 7, 9 and 10, inclusive,
13 inapplicable.

14 23. The Applicant has applied for and been awarded ownership
15 of more than 1000 other domain names, each ending in at.tv and
16 has applied for trademark protection for numerous other domain
17 names, again, each enduing in at.tv, none of which the Opposer
18 has taken issue with rendering Factor Number 6 inapplicable.

19 24. The Applicant has been engaged in business with
20 innumerable domain names since the year 2000, each ending in
21 at.tv without a single issue of confusion arising rendering
22 Factor Number 8 inapplicable.

23 25. The Applicant's business is so dissimilar from that of
24 the Opposer that the goods and services provided is equally
25 wholly dissimilar rendering Factor Number 9 inapplicable.

1 Internet portal through which goods and services can be marked
2 by customers who re-purchase the rights to use Sub-domain names
3 already under the control of the Applicant and uncontested by
4 the Opposer.

5 32. The Opposer has wasted the Applicant's time, money and
6 other resources negotiating in bad faith for the past 4 years
7 as evidenced by its refusal to enter into an agreement the the
8 Applicant needed not negotiate in the first place but did so in
9 good faith in pursuit of an amicable relationship with the
10 Opposer.

11 33. If the individuals who do business under the various Sub-
12 domains already approved then act to violate the copyright,
13 trademark or patents of the Opposer, the Opposer has relief
14 available to it through the court system. However, where the
15 Applicant has failed to violate the rights accorded the Opposer
16 and there exists no valid, lawful reason for denying the
17 Applicant the same protection it affords the Opposer in the
18 Opposer's own business, then the Application should be rightly
19 approved and the two business, again, wholly dissimilar in
20 their goods and services, should be allowed to co-exist and do
21 business within their respective fields.

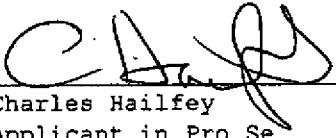
22 34. This Answer is timely filed pursuant to the previous
23 single extension of time request made within seven (7) days.

24 35. This Answer is filed in triplicate in accordance with
25 applicable procedure.

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WHEREFORE, Applicant respectfully submits that Oppser's objection has been shown to be flawed, baseless and wholly without merit and therefore should be denied and Applicant should be granted the protection applied for.

Respectfully submitted this 25th day of October, 2006:


Charles Hailfey
Applicant in Pro Se

From:

Vision Bank TV
3395 Soth Jones
#308
Las Vegas NV 89146

Ready **P**ost.

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE
CERTIFIED MAIL

7005 0390 0002 4925 5906

RECEIVED
OCT 31 2006
USPTO MAIL CENTER

To: Tredemack and Appel

2900 Crystal Dr.

Arlington, Virginia

22202

RETURN RECEIPT
REQUIRED

U.S. POSTAGE
FIRST CLASS
OCT 25 2006
AMOUNT
\$6.32
000-97-45-04
0000
22202

UNITED STATES
POSTAL SERVICE

October 25, 2006

Trademark Trial and Appeal Board
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

VIA: Fax and US Mail

RE: Applicant Response to Opposition Application No. 76/176,902
AT&T Opposer v. Americaat.com

91160143

Dear Sir or Madam,

On or about October 19, 2006, I informed you that I had removed my counsel for lack of diligence and was assuming responsibility of this matter myself. I also requested a brief extension of time within which I would respond, seven (7) days. I have completed the Answer to Opposer's Notice of Opposition and have mailed it to you via US Mail, Return Receipt Requested, this within the prescribed time. Thank you for your attention in this matter and I look forward to your response and ruling.

Sincerely,



Chuck Haifley

2250 E Tropicana #449
Las Vegas, NV 89119
Telephone 702.493.9292
Fax 323.372.3937

AT&T CORP. V. AMERICAAT.COM, LLC
OPPOSITION NO. 91160143

OFFERED BY OPPOSER, AT&T CORP.

EXHIBIT J

Cotropia, Charles S.

From: Matt Starley [matt@silverstatelaw.com]
Sent: Thursday, November 30, 2006 12:28 PM
To: Cotropia, Charles S.
Subject: Representation of AmericaAt

Charles:

I did receive your phone message yesterday. The short answer to your question is that we no longer represent AmericaAt. During my last conversation with them they stated that they were speaking with AT&T's board of directors and that they were going to work out some alternate resolution. Also, during that conversation, I informed AmericaAt that we would be withdrawing as their counsel. I have done nothing yet to formally withdraw from this matter, but our former client has been informed that we no longer represent him (it). For this reason, as far as we are concerned you are immediately free to speak with him (Chuck Haifley) directly. If you have any other questions or would like anything else from our firm relating to this matter, do not hesitate to ask. Thanks.

Sincerely,

Matthew W. Starley, Esq.
ELLSWORTH, MOODY & BENNION
7881 W. Chareleston Blvd., Suite 210
Las Vegas, NV 89117
(702) 658-6100
Fax (702) 658-2502
matt@silverstatelaw.com

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