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

Proceeding	91228289
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Padraic McFreen.

*Opposer,*

v.

MITAC International Corp.

*Applicant.*

Opposition No. 91228289

**OPPOSER’S RESPONSE IN OPPOSITION OF APPLICANT’S MOTION FOR  
SANCTIONS**

Pursuant to the strict interpretation of Rule 37(b)(2) of Fed. R. Civ. P. and Trademark Rule 2.120(g), MiTac International Corp’s. (“Applicant”) Motion For Sanctions against Padraic McFreen (“Opposer”), fails and should not be given consideration nor granted, because Opposer’s behavior does not trigger the availability of a motion for sanctions for Applicant, and because even if this Board is persuaded by Applicant’s omissions, unsupported assertions and numerous misstatements contained within this instant motion, the relief sought by Applicant is for repeated disobedience of multiple Board orders. The relief sought is patently too harsh a remedy based on the claims contained within Applicant’s motion which is plagued with omissions, unsupported assertions and misstatements of fact. Applicant seeks relief that is ultimately inconsistent with this Board’s prior

findings of first-time instances of non-compliance.<sup>1</sup> More importantly, Applicant's motion for sanctions is inconsistent with the elements of discovery for which it sought and obtained this Board's Order to compel.

This Board ordered Opposer to respond, and aside from overruling Opposer's objections, remained silent concerning the qualitative and quantitative nature of Opposer's responses. In its motion to compel, Applicant could have sought to modify its discovery, but did not. Applicant is now, through this motion, attempting to redefine the scope of its own discovery efforts as well as the breadth of this Board's Order compelling Opposer to respond. Through this expanded new scope, the Board's Order would apply to the content of Opposer's responses; however, the Order would still remain silent concerning precisely how Opposer was to have been expected to comply. Indeed, this is not possible, as the Board can only review the behavior of Opposer as it relates to its compliance with the strict letter of its Order compelling Opposer to respond.<sup>2</sup> Opposer's compliance with the letter of this Board's Order is not disputed as parties agree Opposer has participated in discovery with Applicant, has complied with this Board's order completely by serving supplemental discovery responses and amendments upon Applicant as ordered by

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<sup>1</sup> *MHW Ltd v. Simex, Aussenhandels-gesellschaft Savelsberg KG*, 59 USPQ2d 1477, 1478-79 (TTAB 2000) (repeated failure to comply with order and unpersuasive reasons for delay resulted in entry of judgment); *Barron Phillippe de Rothschild S.A. v. Styl-Rite Optical Manufacturing Co.*, 55 USPQ2d 1848, 1854 (TTAB 2000) (pattern of dilatory conduct indicated willful disregard of Board order and resulted in entry of judgment); *Unicut Corp. v. Unicut, Inc.*, 222 USPQ 342, 344 (TTAB 1984) (respondent's continued refusal to obey Board sanctioned by entry of judgment); *See Also Benedict v. Superbakery Inc.*, 665 F.3d 1263, 101 USPQ2d 1089, 1093 (Fed. Cir. 2011) (entry of judgment warranted in view of repeated failures to comply with reasonable orders of the Board and no lesser sanction would be effective).

<sup>2</sup> This Board's standard for sanctions is quite clear: "what does the non-moving party have to 'not do' in order to merit a Board determination of sanctions based on non-compliance?" Opposer did "not do" anything to merit sanctions.

this Board, and Applicant has not made a claim opposing these facts. Applicant's motion confirms Opposer has demonstrated obedience and concedes Opposer complied with this Board's order. Applicant's motion seeks to go beyond the bounds of this Board's Order and the very discovery requests upon which the Order was sought.<sup>3</sup> Applicant's motion for sanctions should be denied.

**Opposer Has Complied with this Board's November 21, 2017 Order to Compel Responses to Applicant's Discovery Requests**

Applicant omits Opposer's amended supplemental responses, makes unsupported claims and disparaging assertions about Opposer without providing requisite evidence and without pointing this Board and Opposer to relevant authority. Applicant places the burden of linking its assertions to evidence on this Board, but this is improper. These opposition proceedings are not between Opposer and this Board. These proceedings are between Applicant and Opposer. Applicant must completely link supporting evidence of record to each assertion upon which its motion rests. Applicant has not met this burden.<sup>4</sup> Applicant also casts Opposer in a false light of non-compliance, and paints upon it a fascia of bad faith, while the evidence supports just the opposite. Applicant's omissions, misstatements, unsupported assertions and lack of use of trademark rules, prejudice Opposer, forcing it to make guesses and ultimately argue against itself and its own

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<sup>3</sup> Applicant is attempting to grossly expand the rules of this Board, hold Opposer accountable for responses it never sought, use the instant motion as a catch-all, violate this Board's standing protective order, ignore Board policies concerning customer information and force this Board to take on its burden of connecting the dots as it has omitted responses, omitted evidence, omitted trademark rules relating to discovery responses and objections, so as to simply rely on its own unqualified assertions as the chief basis for its motion for sanctions.

<sup>4</sup> See *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 76 USPQ2d 1616, 1622 (Fed. Cir. 2005) ("Attorney argument is no substitute for evidence") (Counsel cannot take the burden from Applicant).

supporting evidence. Opposer's participation and compliance are consistent with precedents, rules and procedures set out by this Board in its Trademark Trial And Appeal Board Manual Of Procedure ("TBMP"), June 2017.

In accordance with Rule 37CFR § 2.120(h) and TMBP § 527.01(a), "[i]f a party fails to participate in the required discovery conference, or if a party fails to comply with an order of the Trademark Trial and Appeal Board relating to disclosure or discovery, including a protective order, the Board may make any appropriate order... ." In its November 21, 2017 Order, this Board ordered Opposer to "serve supplemental responses to Interrogatories Nos. 1-5, 14-16, 18, 19, 20-24, 30-37 and 39-41."

This Board further ordered Opposer to "serve supplemental responses to Applicant's requests for production," and it gave Opposer twenty (20) days from the mailing date of its order to do so. The Order also reminded Opposer of its obligation to supplement its responses accordingly. It is not disputed that Opposer served its supplemented responses as ordered and served amended supplemented responses in response to Applicant's notice of deficiency—all in compliance with this Board's November 21, 2017 Order.<sup>56</sup>

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<sup>5</sup> In its motion, Applicant concedes "[o]n December 7, 2017, in response to the Order, Opposer served supplemental discovery responses... ." (35 TTABVUE 3).

<sup>6</sup> Applicant concedes "Opposer served amended [supplemental] response" in accord with the Order; however, Applicant mischaracterizes Opposer's amended supplemental responses as "unchanged" substantively. This is a misstatement on the part of Applicant, and Applicant fails to include Opposer's amended supplemental responses in its motion as required by this Board concerning omissions. Applicant uses its notice of deficiency to Opposer as the basis for its motion; however, omits the pertinent responses to its very notice of deficiency, thus, giving this Board an impression of non-compliance and lack of cooperation on the part of Opposer. (35 TTABVUE 4).

Well ahead of this deadline, Opposer complied with this Board's Order and served supplemental responses to Interrogatories and supplemented its document production on December 7, 2017. *Exh. 1, PM Decl. 6.* Applicant contemporaneously accessed Opposer's supplemented responses and document production on that same day, December 7, 2017. *Id.* Opposer's early compliance presented Applicant with more than fifty-four (54) days within which to complete its discovery; however, Applicant did not begin re-visiting Opposer's Internet sites and reviewing its goods and services until December 27, 2017, then, sent Opposer a notice of deficiency on December 29, 2017. *id. 9.* Applicant waited some twenty plus (20+) days to continue its discovery efforts<sup>7</sup>. Applicant, then, requested that Opposer participate in a telephone conference on January 5, 2018 and further demanded that Opposer respond to identified deficiencies within Opposer's supplemented responses and production before January 5, 2018, the day of the proposed telephone conference, or face additional sanctions.<sup>8</sup> Applicant further commenced a barrage of emailed

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<sup>7</sup> Applicant accessed Opposer's websites, <http://www.imivu.com>, <http://www.mivu.photos>, on December 27, 2017, and reviewed Opposer's goods and services.

<sup>8</sup> In its email alleging deficiencies to Opposer on December 29, 2017, Applicant requested a call with Opposer on January 5, 2018, "by noon". The stated purpose of the call was to "discuss these deficiencies immediately." Opposer immediately responded to Applicant via email informing Applicant that "[s]hould any Response require additional clarification, I will gladly provide same." Opposer agreed to participate in an optional conference call with Applicant on January 5, 2018. Opposer sought clarification from Applicant concerning specific AEO documents Applicant believed should not have been designated AEO as well as Applicant's "brand name" and "product" concerns. Applicant replied to Opposer simply restating its concerns, but did not provide Opposer with any clarification beyond that of its own opinion. Applicant, then, stated "[w]e would appreciate your responses immediately to our deficiency letter and before our call. We are also available on January 4 for the call at almost any time to discuss these deficiencies..." Opposer responded, informing Applicant that it would participate in the call on January 5, 2018, and that it would do its best to accommodate Applicant's short-notice request. On December 31, 2017, Applicant, sent yet another email to Opposer, challenging Opposer's position concerning its response timeline, and began to accuse Opposer of ignoring "repeated requests," "acting in bad faith," "obfuscating the truth," "having no sales," and its "products do not even exist." On January 4, 2018, at 11:00am EST, Applicant sent another email to Opposer concerning its planned conference call. That same day, Applicant sent

threats and abuses ultimately demanding to expand the scope of the proposed discovery conference call to include substantive discussions concerning Opposer's prior counsel's legal matters, attacks on Opposer's registered marks and product samples. When Opposer informed Applicant of its threatening tone, lack of professionalism and expanded scope of the proposed telephone discovery conference call which parties had agreed to discuss deficiencies now necessitated the participation of the TTAB, Applicant responded with guidance stating in part that "the TTAB's involvement is not required" and peppered Opposer yet again with additional threats of sanctions.<sup>910</sup> Applicant unilaterally imposed conditions upon Opposer, disregarding the fact that Opposer had made significant good faith efforts to comply with the Board, and accommodate Applicant's demands—all in an effort to assist Applicant in completing its discovery.

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Opposer another email stating that "[w]e are surprised we have not received your return email...in the meantime, we want to put you on notice that your former attorney of record...consented to an order suspending him from the practice of law before the Trademark Office in part for filing fraudulent or digitally manipulated specimens of use...[y]our specimen of use is such a specimen which invalidates your trademark registration for MiVu....[w]e suggest you bear this in mind during our call tomorrow." Later that same day, Applicant sent Opposer yet another email stating "[a]s a follow up to my below email, this includes all of your trademark registrations that include the word 'MiVu' such as MiVu PPCV, MiVu Mogobile and MiVu Escapevelocity in addition to MiVu. We look forward to talking to you tomorrow." Opposer disagreed with the change in scope of the discovery conference call, advised Applicant yet again about its use of threats and abusive communication, and requested that Applicant include the TTAB in the discovery conference call. Applicant refused, and attempted to persuade Opposer to proceed without including the TTAB. Applicant, then, canceled the conference call. (35 TTABVUE 17-45)

<sup>9</sup> In one of many of its January 4, 2018 email messages sent to Opposer, Applicant stated in pertinent part "[t]here is no basis for your refusal to participate in the call tomorrow without an Interlocutory Attorney present...[w]e point to Rule 37 CFR 2120(2) which only provides for participation of an interlocutory attorney for a Rule 26(f) discovery conference...we consider this refusal to be in bad faith for which additional sanctions are warranted."

<sup>10</sup> TBMP § 413.01 "The telephone conference procedure is not limited to motions or stipulations relating to discovery. A telephone conference may be sought by a party or initiated by a Board professional under any circumstances where a telephone conference would be beneficial, and a Board professional may sua sponte participate in the parties' discovery conference if it would be useful... "

Though Opposer made a more than good faith effort to and did provide a substantive response to Applicant's identified deficiencies, and served amended supplemented responses as demanded by Applicant on January 4, 2018, Applicant still moved this Board for sanctions relying entirely upon its notice of deficiency to which Opposer had provided amended supplemented responses—and Applicant intentionally omits from its instant motion.<sup>11</sup> Applicant should not be able to benefit from its behavior. *Guthy-Renker Corp. v. Boyd*, 88 USPQ2d 1701, 1704 (TTAB 2008) (motion for sanctions denied; moving party could have made additional efforts with adverse party to schedule [a] conference, including requesting Board participation in the discovery conference, but failed to do so); *Giant Food, Inc. v. Standard Terry Mills, Inc.*, 231 USPQ 626, 632 (TTAB 1986) (No priority of discovery; "it is not the prerogative...for parties or their counsel to unilaterally impose conditions upon the sequence and timing of Discovery which are not provided by the rules governing practice before the Board"). Opposer was forced to report Applicant's unprofessional behavior and communication to the director of OED<sup>12</sup>. *PM Decl.* 7.

Furthering its behavior, Opposer believes Applicant intentionally omitted these very same amended supplemented responses to its December 29, 2017 notice of deficiency from its instant motion for sanctions. By so doing, Applicant has

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<sup>11</sup> In its January 5, 2018 email to Opposer, Applicant stated "[t]hank you for providing the amended responses to our interrogatories and document requests."

<sup>12</sup> As Opposer is self-represented, Pro Se, and according to the OED, Applicant's counsels' behavior may be in violation of 37CFR § 11.304, §11.403, §11.804.

placed Opposer in a prejudiced false light before this Board. Applicant's motion for sanctions should be denied.

**I. Opposer's Good Faith Effort to Comply with The Board's Order and Assist Applicant in its Discovery**

As stated herein above, Opposer complied with this Board's November 21, 2017 Order, on December 7, 2017, by providing to Applicant a link from which it could download Opposer's supplemented responses and production. Applicant did access Opposer's files and did download them on the same day, December 7, 2017.

*PM Decl. 6.*

**II. Opposer's Supplemented Responses to Applicant's Interrogatory Nos. 1(a); 1(b); 1(c); 2(a), 2(b), 2(c); 5(a) Omitted by Applicant in This Instant Motion For Sanctions**

Interrogatory 1(a)

List each product upon which Opposer uses Opposer's Marks in commerce.

Opposer's Supplemented Response 1(a):

MiVu software and hardware, JARVIS; MiVu PPCV; Vertical Hive/BeeAware; MiVu EscapeVelocity; StreetCloud/Mainstreet; BumbleBeeDrone; MiVu Mogobile.

Opposer's Supplemented Response to Interrogatory 1(a) Does not Support a Finding of Non-Compliance

Applicant bases its motion for sanctions on a request it never makes in this Interrogatory. Applicant states unequivocally that its Interrogatory sought to have Opposer list "generic names of products" in its response. This is not the case. As the Board can see here, Applicant requests Opposer to list "each product," not each generic product. There exists "five product levels: 1) core benefit based products; 2)

generic products; 3) expected products; 4) augmented products; 5) potential products.”<sup>13</sup> Applicant does not specify which product level it wants Opposer to list. When Opposer requested assistance from Applicant concerning “products”, Applicant doubled-down on its concerns, rather than taking the requisite steps to work with Opposer to help facilitate the discovery.<sup>14</sup> Applicant now states that it wanted “generic” product information. Generically speaking, Opposer uses its Marks on computer software based goods. This is the generic product level for these product types. Since Applicant already knew the generic product levels for Opposer’s products, it has not shown how it was prejudiced in any way by Opposer providing the list of augmented product levels.<sup>15</sup> To the extent Applicant’s motion is based on Opposer’s response here, Opposer’s response does not rise to a level

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<sup>13</sup> “Five Product Levels: 1) Core Product – This is the basic product and the focus is on the purpose for which the product is intended. For example, a warm coat will protect you from the cold and the rain; 2) Generic Product – This represents all the qualities of the product. For warm coat this is about fit, material, rain repellent ability, high-quality fasteners, etc.; 3) Expected Product – This is about all aspects the consumer expects to get when they purchase a product. That coat should be really warm and protect from the weather and the wind and be comfortable when riding a bicycle; 4) Augmented Product – This refers to all additional factors which sets the product apart from that of the competition. And this particularly involves brand identity and image. Is that warm coat in style, its color trendy and made by a well-known fashion brand? But also factors like service, warranty and good value for money play a major role in this; 5) Potential Product – This is about augmentation and transformations that the product may undergo in the future. For example, a warm coat that is made of a fabric that is as thin as paper and therefore light as a feather that allows rain to automatically slide down.” <http://www.toolshero.com>

<sup>14</sup> In Opposer’s December 29, 2017, email response to Applicant, Opposer requested of Applicant to have it set-out for him what Applicant meant by “brand name” and “product.” In Applicant’s response to Opposer’s request for clarification, Applicant stated in pertinent part “...you list brand names such as MiVu, MiVu Jarvis et al, instead of the kind of product you are selling such as a type of computer hardware device or what particular computer software the MiVu mark is used... .” As the Board can see, if Applicant sought the “generic product”, it actually identifies the generic product of Opposer itself, that being “computer software.” Even in its instant motion, Applicant still has not made it clear to this Board or to Opposer precisely what product information Opposer failed to provide. Applicant doesn’t even point to which trademark rule and TTAB precedent it relies on for its Objections and the instant motion. Applicant’s Objections are not valid objections.

<sup>15</sup> Fed. R. Civ. P. 26(e) Notes of Advisory Committee on Rules – 1983 Amendment (“no obligation to provide supplemental or corrective information that has been otherwise made known to the parties in writing or during the discovery process...”).

meriting sanctions for non-compliance, and Applicant's motion for sanctions should not be granted.

Interrogatory 1(b)

List each product upon which Opposer intends to use Opposer's Marks in commerce.

Opposer's Supplemented Response 1(b):

MiCam, MiStation. Opposer's planned services include: MiStation services, Internet Service; Telephone Service; Gexte.com, a marketplace; Delivers autonomous vehicle logistics and location based services; MiMovie video services; MiGame gaming content, audio and video services; MiCast teleconference services; MiTalk digital conferencing services; MiAdvertising advertising marketplace; MiCare digital healthcare services, Power & Light; Gas Energy Services; MiRobot; MiMiC; CityCimple; Content Management and Licensing.

Opposer's Supplemented Response to Interrogatory 1(b) Does not Support a Finding of Non-Compliance

Applicant states Opposer has not answered this question; however, Applicant has omitted Opposer's response from its motion. Applicant further states that it raised its Objection to Opposer's response in its December 28, 2017 email; however, Applicant does not provide this Board with Opposer's responses to Applicant's Objections. Opposer provided its responses, Applicant omitted Opposer's responses from its motion, and Opposer points this Board to its responses. To the extent Applicant bases its motion for sanctions on its assertion that Opposer has not provided a response to this Interrogatory, Applicant's motion for sanctions should

be denied as Opposer's response does not rise to a level meriting sanctions for non-compliance.

Interrogatory 1(c):

With respect to Opposer's Goods, specify each product which is currently in use in commerce.

Opposer's Supplemented Response to Interrogatory 1(c) Omitted from motion by Applicant

MiVu software and hardware, JARVIS, MiVu PPCV, Vertical Hive, MiVu EscapeVeloCity, StreetCloud/Mainstreet, BumbleBeeDrone, MiVu Mogobile.

Opposer's Supplemented Response to Interrogatory 1(c) Does not Support a Finding of Non-Compliance

Applicant raises the same product argument here; however, Opposer has shown herein above, that Applicant fails to provide the requisite guidance concerning products and that Opposer has responded to the Interrogatory. To the extent Applicant's motion for sanctions relies on Opposer's response here, Opposer's response does not rise to a level meriting sanctions for non-compliance. Applicant's motion for sanctions should be denied.

Interrogatory 2(a):

With respect to Opposer's Marks, identify the date of first use the mark was first used in commerce and the specific goods upon which was used.

Opposer's Supplemented Response to Interrogatory 2(a) Omitted from motion by Applicant:

MiVu software and hardware, with a Date of First Use in Commerce (DFU) of 12/15/13; JARVIS BeeAware software with a DFU of 6/15/2015; MiVu PPCV with a DFU of 10/15/16; Vertical Hive software and hardware with a DFU of 04/01/2016; MiVu EscapeVelocity software with a DFU of 10/15/16; StreetCloud/Mainstreet software with a DFU of 05/01/2015; BumbleBeeDrone computer software and hardware with a DFU of 04/01/2016; MiVu Mogobile computer software with a DFU of 10/15/16.

Opposer's Supplemented Response to Interrogatory 2(a) Does not Support a Finding of Non-Compliance

In its motion, Applicant claims Opposer has not stated the “specific goods on which the mark was used...Opposer states brand names only.” (35 TTABVUE 6) In this motion, Applicant also claims Opposer “...has never sold any products using the MiVu brand... .” (35 TTABVUE 1) When Applicant raised the product and brand concern in its notice of deficiency, Opposer requested clarification. In response, Applicant simply repeated its concern without actually providing Opposer with much needed clarification. . Applicant's conceding of Opposer's use of the “brand”, then, making a complete about-face to state Opposer has never used the “brand”, makes it unreasonably difficult to understand its concern, and more importantly, precisely identify where Opposer failed to comply with the Board's Order.

Applicant's motion for sanctions can't be granted, nor can Opposer be sanctioned by this Board for non-compliance of its Order, where the evidence of record provided by Applicant is that of Opposer providing responses in compliance with this Board's

very same Order. A motion for sanctions is only available to Applicant if and when Opposer fails to or refuses to comply. That is not the case here, and Applicant has not provided evidence in support of such a conclusion. Applicant's motion should be denied.

In its discovery requests, Applicant uses the terms "Goods" and "Products" interchangeably, though these terms do not have identical definitions. As discussed herein above and to contrast with Goods, once again, there exists "five product levels: 1) core benefit; 2) generic products; 3) expected products; 4) augmented products; 5) potential products." *PM Decl.* 11. For purposes of this Response in Opposition, a "generic product" is a "representative of the expected and augmented products, but it lacks unique branding and specific characteristics that ultimately drive consumption." *Id.* 12. A generic computer software and computer hardware product would simply be "computer software". *Id.* 13. Based on this commonly known generic product classification, an example of an "augmented software product would be MiVu, MiVu PPCV, MiVu Mogobile or MiVu EscapeVelocity." *id.* 16. Opposer's response to Applicant's Interrogatory 2(a) included Opposer's augmented products/goods, as Opposer reasonably concluded Applicant was interested in understanding the manner in which Opposer's Marks are used on augmented product level products/goods, since "generic products generally possess little value in and of themselves." *id.* 14. Additionally, Applicant did not specify it wanted generic products identified; however, in the event Applicant did want generic products identified, Opposer's generic product class is

“computer software and computer hardware”, which Opposer provided in related Interrogatories and of which Applicant was already aware. Applicant provides no TTAB precedent or trademark rule to assist Opposer or this Board in understanding precisely what it sought here. Due to the lack of clarity in Applicant’s requests, absence of clarity in its instant motion and obvious misunderstanding of computer software based product levels generally, Opposer’s response to Interrogatory 2(a) does not support a finding of non-compliance, and Applicant’s motion for sanctions should be denied.

Interrogatory 2(b)

With respect to each of Opposer’s Marks, identify the customer who purchased the goods.

Opposer’s Supplemented Response to Interrogatory 2(b) Omitted from motion by Applicant:

Opposer has produced confidential documents identified and marked in accord with trademark law and the standing Protective Order as ATTORNEY’S EYES ONLY, within the Bates Range: AEO MCF00000001-268<sup>16</sup><sup>17</sup><sup>18</sup>, specifically, the settlement

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<sup>16</sup> In its motion, Applicant states it uploaded Opposer’s AEO documents as Confidential in accordance with its designation and not that of Opposer’s AEO designation. According to the standing protective order, when a designation is challenged, the challenged documents are to be treated as designated until the designation is changed. (35 TTABVUE 4)

<sup>17</sup> Applicant asserts “Opposer has advised Applicant that designating said documents as Confidential is improper since said documents are available to the public.” This assertion is factually baseless and without merit. Opposer has not advised Applicant about the designation of its own documents. Applicant has not provided evidence supporting such a claim. (35 TTABVUE 4). Applicant has not provided support for its assertions here. It has not provided this Board or Opposer with identical documents it obtained from public sources, TTAB precedent or trademark rules upon which it relies.

<sup>18</sup> TBMP § 412.01(b) in pertinent part, “a challenge to the designation of information as protected **must be made substantially contemporaneous** with the designation, or as soon as practicable after the basis for challenge is known. When a challenge is made long after a designation of information as protected, the challenging party will be expected to show why it could not have made

related documents that are responsive to this interrogatory. **Opposer also has planned services that are being utilized for advertising** by Australian UGG Boots, Alibaba, AliExpress.com, Intlestore.com, fuzzylogicusa.com, V8Options.com, 1-800florals.com, Interserver Web Hosting, Leezair.com, New Zealand Rail, Cover More Travel Insurance, anrdoezrs.net, NewZealandbyferry.com, 1-800postcards.com, behappyinlife.com, animeartbookonline.com, cdsystems.uk.com, playeuromillions.com, dpholvw.net, elementbars.com, magicmoneycard.com, LiveFootballTickets.com, all-battery.com, strongliftwear.com, boneart.co.nz, mycasegenie.com, medastrana.com, lendinero.com, customIcing.com.au, Wholesome Cook ebooks, kaboodlehampers.com.au, joujou.com.au, fretacticalstuff.com, jeffsvacations.com, elitemate.com, pajamashoppe.com, getsexy.com.au, purelypiercings.co.nz, teethwhiteningsuperstore.com, atlasairpurifier.com, chummie.com, Big Giraffe Gadget Insurance, enniaingerier.com.

Opposer’s Supplemented Response to Interrogatory 2(b) Does not Support a

Finding of Non-Compliance:

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the challenge at an earlier time... .” Applicant waived its right to challenge Opposer’s AEO designations as it failed to raise the issue substantially contemporaneous with the designation. Opposer produced AEO documents to Applicant in August 2017, and Applicant referenced these same documents in its Response Reply Brief in September 2017, 22 TTABVUE 4, and Footnote No. 2. Opposer bates ranged the confidential documents again and re-produced them to Applicant on December 7, 2017, Applicant did not raise an issue with certain document designations until December 29, 2017. In accord with this Board’s rules, Applicant has waived its right to challenge the designation, because it failed to make its challenge substantially contemporaneous to Opposer’s designations at the time the basis for the challenge was known. Applicant was aware of its basis in September 2017. More importantly, in its assertions here in the instant motion, **Applicant does not show why** it couldn’t have made the challenge sooner. Applicant didn’t provide any explanation whatsoever to substantiate its AEO related assertions in its motion.

Opposer provides customer names of its services, since these customer names are readily available as advertisers to the general public on Opposer's website.<sup>19</sup>

Opposer's response to Interrogatory 2(b) does not support a finding of non-compliance, and Applicant's motion for sanctions should be denied.

Interrogatory 2(c)

For each matter identified in (b) above, identify the persons having the most knowledge of such first use of Opposer's Marks.

Opposer's Supplemented Response to Interrogatory 2(c) Omitted from motion by

Applicant:

Opposer, Padraic McFreen; the persons representing the entity identified in the documents ATTORNEY'S EYES ONLY, with the Bates Range: AEO MCF-0000001-268, **specifically, the settlement related documents.**

Opposer's Supplemented Response to Interrogatory 2(c) Does not Support a Finding of Non-Compliance:

Opposer's supplemented response unequivocally identifies the persons with the most knowledge sought by Applicant. Applicant intentionally omitted this supplement from its motion so as to cast a false light on Opposer's compliance with this Board's Order.<sup>20</sup> Opposer's response to Interrogatory 2(c) does not support a finding of non-compliance.

Interrogatory 5(a):

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<sup>19</sup> Opposer's website, <http://www.mivu.photos>, provides advertising space to US and Outside US corporations and businesses. Customer identity is readily available to the general public.

<sup>20</sup> Applicant's motion is silent concerning its rationale for not basing its motion for sanctions on Opposer's responses to its December 29, 2017 notice of deficiency.

Identify the channels of trade in which Opposer's Goods sold under Opposer's Marks move in, including by not limited to the distribution channels and retails outlets where Opposer's Goods are sold.

Opposer's Supplemented Response to Interrogatory 5(a) Omitted from motion by Applicant:

Opposer's utilized trade channels include its website and direct sales.

Opposer's Supplemented Response to Interrogatory 5(a) Does not Support a Finding of Non-Compliance:

Applicant asserts Opposer provided to it links and screenshots to websites that are non-functional; however, Applicant does not identify these links or non-functioning websites in its motion. It just makes a blanket statement that all documents produced by Opposer have been provided to the Board to review. Applicant is not to rely on the Board to sift through the record in search of Applicant's non-existent evidence in support of these baseless assertions. Applicant provides no evidence at all in support of its assertions. Contradictory to Applicant's assertions are Opposer's website traffic analytics<sup>21</sup> and content transfer record which undeniably prove Applicant spent "several hours" on Opposer's websites reviewing Opposer's goods<sup>22</sup> and that "1.3 megabytes of aggregated and prioritized digital content was transferred from [Opposer's] sample software demonstration website to a computer located at [Applicant's] IP Address." Additionally, Applicant,

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<sup>21</sup> According to Opposer, Applicant's Internet Protocol Address is "216.75.92.26." (*PM Decl.* 4.)

<sup>22</sup> Opposer's certifies its websites are "fully functional and have remained at a service performance level of 99.99% up time for the past several years." Opposer's purchase and download links are functional and have never been off-line, and Applicant provides no evidence substantiating its assertions. *PM Decl.* 17.

while accessing Opposer's website, "...did not click on or access any one software product link for MiVu PPCV, MiVu Mogobile, [or] MiVu EscapeVelocity." *PM Decl.*

9-10. This evidence refutes Applicant's assertions concerning non-functioning websites, broken links, and the absence of goods. Opposer's supplemented response does not support a finding of non-compliance. Applicant's motion for sanctions should be denied, because evidence strongly suggests Applicant's assertions are factually baseless and lack the requisite supporting evidence to survive its denial.

Interrogatory 5(b):

Identify the class of purchasers for Opposer's Goods sold under Opposer's Marks.

Opposer's Supplemented Response to Interrogatory 5(b) Omitted from motion by

Applicant:

Businesses, corporations.

Opposer's Supplemented Response to Interrogatories 5(a) and 5(b) Do not Support a Finding of Non-Compliance

Applicant makes its requests for trade channels and classes of purchasers; however, claims Opposer is non-compliant when Opposer provides the information requested. Applicant bases its motion for sanctions to a significant degree on the fact that Opposer does not provide customer names here; however, Applicant does not request customer names in Interrogatories 5(a) and (b). If Applicant sought such information, it should have requested same. Applicant is attempting to have this Board hold Opposer to a standard which is inconsistent with TTAB precedent and this Board's policies concerning customer name disclosure. Opposer is not

required to provide Applicant with the information it now claims it requested.

*Johnson Pump / General Valve Inc. v. Chromalloy American Corp.*, 10 USPQ2d 1671, 1675 (TTAB 1988) (unless issue is abandonment or first use, party need not reveal names of its customers, including dealers, it being sufficient to identify classes of customers and types of businesses; *Varian Associates v. Fairefield – Noble Corp.*, 188 USPQ 581, 583 (TTAB 1975) (“while it is the Board policy not to require the disclosure of customer and mailing lists, a Party may be asked to reveal the particular classes of customers of the types of businesses in which they are engaged”); *Miller & Frink Corp. v. Servicemaster Hospital Corp.*, 184 USPQ 495, 495-96 (opposer need only reveal the classes of people to whom such goods sold under the mark are distributed and not the actual customer names). As pointed out herein above, Applicant is attempting to expand the scope of its discovery and use this Board as its accomplice. *Fed. R. Civ. P. 26(b)(2)(B) [Note 3]* “a party will not be permitted to obtain, through a motion to compel, discovery broader in scope than that actually sought in the discovery request(s) to which the motion pertains”. Opposer’s supplemented responses here are in compliance with TTAB precedent and do not support a finding of non-compliance. This Board would be grossly in error should it grant such a motion for sanctions based in-part on Opposer not providing information it has policies in place for which it forbids such requirements.

Applicant’s motion for sanctions should be denied.

**III. Opposer’s Compliant and Responsive Responses to Applicant’s Document Request Nos. 6, 9 and 20**

Document Request 6:

All documents showing, concerning, evidencing, relating or referring to the production of Opposer's Goods, including, without limitations, documentation indentifying every place of business where Opposer's Goods are produced and documentation of the total volume of sales in units and the equivalent dollar value.

Opposer's Amended Response to Document Request No. 6 Omitted From its Motion by Applicant

Confidential Documents Attorney's Eyes Only Produced Bates Range: AEO-0000111-124; 132-134; 142-145; which includes the Confidential Settlement Agreement. No responsive documents relating to place of business where Opposer's Goods are produced. No documents are being withheld in this response.

Document Request No. 9

A sampling of invoices showing sales of each of Opposer's Goods under each of Opposer's Marks since the date of first use in commerce to present.

Opposer's Amended Response to Document Request No. 9 Omitted From its Motion by Applicant

Confidential Documents Attorney's Eyes Only Produced Bates Range: AEO-0000026-42; 64-67; 68; 69-96; 98; 99-101; 125; 126-131; 163; 164; 167; 168, which includes the confidential settlement statement. No documents are being withheld in this response.

Document Request No. 20

Provide all documents showing, concerning, evidencing, relating or referring (a) to the date when use of each item sold under Opposer's Marks commenced; and (b) the types of goods on or in connection with which Opposer's Marks were used.

Opposer's Amended Response to Document Request No. 20 Omitted From its Motion by Applicant

Documents produced Bates Range: MCF-0000058-0000065; AEO MCF Bates Ranged Documents which include the Confidential Settlement Statement. No documents are being withheld in this response.

Opposer's Supplemented Response to Document Request Nos. 6, 9 20 Do not Support a Finding of Non-Compliance

Opposer's responses include a confidential settlement statement/agreement which should provide to Applicant the requested volume of sales of Opposer's Goods. Applicant requests invoices; however, its requests seek only invoices and does not consider other proof of transactions as bona fide use of a mark in the ordinary course of trade for Opposer's industry. Opposer provides documents which are responsive to this request; however, Applicant either disagrees with or is unfamiliar with the type of documents Opposer has produced. Opposer produced screen shots from its website<sup>232425</sup>, showing its Marks and associated Goods.<sup>26</sup> Opposer went

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<sup>23</sup> "...documents bate-stamped 375-397 have been uploaded as well." (35 TTABVUE 4) and Footnote 4.

<sup>24</sup> Opposer re-produced screenshots to Applicant in response to its notice of deficiency on January 4, 2018. As noted herein bellow (Footnote 27), Applicant thanked Opposer for its amended responses in its January 5, 2018 email to Opposer, then, in the very same email, requested screenshots from Opposer so as to resolve its own "confusion concerning the issue of use". Applicant is represented by a highly organized, experienced and successful law firm based in New York, NY. Indeed, Applicant is acting in bad faith, as the burden of resolving Applicant's internal misunderstandings rests with Applicant and not with its adverse party, Opposer.

further by seeking clarification from Applicant concerning its request for samples, by offering to provide sample computer software code<sup>27</sup>; however, Applicant declined Opposer's offer and requested a "screenshot...showing that it is downloadable" and Opposer's customers' names.<sup>28</sup> Opposer's settlement agreement is a legal contract and is the type of interstate commerce transaction for which Congress provides regulation.<sup>29</sup> Applicant's decision to disregard Opposer's documentation is not a basis for a motion for sanctions, but a factual question that must be addressed during trial.<sup>30</sup> Applicant requested screenshots from Opposer's webpage, received

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<sup>25</sup> *In re Dell Inc.*, 71 USPQ2d 1725, 1727 (TTAB 2004) (website specimen for downloadable computer software acceptable when it includes means to download, purchase or order the software).

<sup>26</sup> Opposer's Marks are displayed in close proximity to its Goods which is in compliance with the USPTO's Webpage Specimen As Displays Associated With The Goods guidance, specifically, "...must contain a picture or textual description of the identified goods; show mark sufficiently near the picture or description of the identified goods to associate the mark with the goods; and provide information necessary to order the identified goods." More importantly, "...mark[s] may be displayed at the top of the webpage, separated from the relevant goods by the website navigation tabs. Since it is customary for retailers to place their marks here...quail[ies] as a trademark if the webpage otherwise demonstrates an association between the...mark[s] and the identified goods."

<sup>27</sup> In its response to Applicant's many email messages on January 4, 2017, Opposer, in response to Applicant's demand to see a sample of Opposer's Goods, Opposer stated "[c]oncerning my amended production to Requests 6 and 16, you want to see the actual pre-production and sandbox code as well as the production computer software code for each good, correct? Your request appears to be for that of packaged goods...[a]s you know, the software may be downloaded from an FTP site, similar to the way you received the production documents. Since the goods are software, where would you propose I send a sampling of the code?" (35 TTABVUE 47)

<sup>28</sup> In its January 5, 2018 email to Opposer, Applicant stated "...[w]e believe we can readily clear up the confusion concerning the issue of use if you send us the link so that we can download it or a screenshot of the webpage showing that it is downloadable...please provide a sampling of the names of your customers who have downloaded the software..." (35 TTABVUE 51) Applicant's persistent request for customer names is a direct disregard for this Board's policies.

<sup>29</sup> According to The US Supreme Court's recent decision, specifically, *Adidas*, evidence a transaction had a specific effect on commerce is not required and evidence Goods are going to travel out of the state or across state lines is also not required. What is required to satisfy the commerce clause is that the activity falls within a category of conduct that in the aggregate has the "requisite" effect on commerce and not a substantial effect.

<sup>30</sup> TMEP 901.02: "...the ordinary course of trade' varies from industry to industry. Thus, for example, it might be in the ordinary course of trade for an industry that sells expensive or seasonal products to make infrequent sales. Similarly, a pharmaceutical company that markets a drug to treat a rare disease will make correspondingly few sales in the ordinary course of its trade; the company's shipment to clinical investigators during the Federal approval process will also be in its ordinary course of trade...the revised definition of 'use in commerce' be interpreted flexibly so as to

the requested screenshots from Opposer, now, asserts Opposer's production of screenshots is one reason its motion for sanctions against Opposer is warranted.

Applicant neglects to provide this Board or Opposer with the TTAB precedent and trademark rules it relies on concerning Opposer's evidence of bona fide use.

Applicant doesn't even provide reference to industry practice relevant to Opposer's specific industry. Applicant provides nothing at all to support its assertions and implications that Opposer's Marks are not displayed in accordance with guidelines established by the USPTO. Applicant's motion for sanctions should be denied.

For the reasons set forth herein above, Applicant's Motion For Sanctions fails to meet the requirements set forth by this Board and should not be granted. One logical conclusion, Applicant moved this Board for sanctions so as to further bully and coerce Opposer as well as delay these Opposition proceedings. Applicant has not offered this Board one *scintilla* of evidence in support of its assertion that Opposer's responses to its discovery "were deliberately designed to obscure the truth and were indeed substantively nonresponsive." (35 TTABVUE 13). Applicant fails to provide the requisite TTAB decisions it relies upon for its assertions, but generously provides TTAB decisions relating to the relief it seeks. In order to trigger its relief, Applicant must prove Opposer's behavior merits sanctions. Applicant has not made any effort to meet its burdens here.

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encompass various genuine, but less traditional, trademark uses, such as those in test markets, infrequent sales of large expensive items, or ongoing shipments...some factors to consider when determining compliance with the statutory requirements for 'bona fide use of a mark in the ordinary course of trade' are: (1) the amount of use; (2) the nature and quality of the transaction; (3) what is the typical use within a particular industry. *See Automedx v. Artivent Corp.*, 95 USPQ2d 1976 (TTAB 2010) (finding sales of demonstration models of portable medical ventilators to military constituted bona fide use of mark in commerce).

In opposition of Applicant's motion, Opposer has shown itself to be obedient, compliant and the recipient of unprofessional coercive discovery practices. The TTAB decisions Applicant relies on for its relief, are based upon a pattern of non-compliance, delay, refusal and unreasonable disobedience of multiple Board orders. That is not the case here in this instance, and this motion is prima facie evidence of Applicant's attempt to obfuscate the truth contained within Opposer's responses, and an attempt to mask Opposer in an image of bad faith to this Board.

Opposer has completely unsubstantiated every basis upon which Applicant's relies for its motion for sanctions. It is without merit *in toto*, and should be denied.

This Board should further consider sanctions against Applicant for its misconduct, blatant and obvious harassment, and numerous misstatements of fact upon which its motion relies.

Respectfully submitted,

February 2, 2018

/s/Padraic McFreen  
Padraic McFreen, Opposer  
13357 Dumbarton Street  
Carmel, IN 46032  
[pmcfreen@gmail.com](mailto:pmcfreen@gmail.com)

**ELECTRONIC MAILING CERTIFICATE**

I hereby certify that the foregoing Motion is being submitted electronically through the Electronic System for the Trademark Trial and Appeal Board (“ESTTA”) and [doCKET@lawabel.com](mailto:doCKET@lawabel.com), [leabelman@lawabel.com](mailto:leabelman@lawabel.com), [jbseyler@lawabel.com](mailto:jbseyler@lawabel.com) on this 2nd day of February, 2018.

By: /Padraic McFreen/  
Padraic McFreen, Opposer  
13357 Dumbarton Street  
Carmel, IN 46032  
[pmcfreen@gmail.com](mailto:pmcfreen@gmail.com)  
281-736-0510

# **EXHIBIT 1**

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

PADRAIC MCFREEN,

*Opposer,*

v.

MITAC International Corp.,

*Applicant.*

Opposition No. 91228289

**DECLARATION OF PADRAIC MCFREEN**

I, Padraic McFreen, under penalty of perjury, state the following facts—which are based on my personal knowledge:

1. I have an extensive background in computer software, computer hardware, intelligent systems, artificial intelligence, clean energy systems, computer networks, wireless and wireline networks, application development, business intelligence, software design, systems architecture, multimedia and communications network designs and location based technologies and associated networks and devices.

2. I have successfully studied Product and Service Go-to-Market Strategies and Product Development at Stanford University.

3. I have been certified in Product and Service Design Innovation by the Massachusetts Institute of Technology/Sloan School of Management.

4. Attached hereto as Exhibit 1 is a true and correct copy of the Internet Reputation Lookup containing the IP Address of lawable.com. lawable.com's IP Address is 216.75.92.26.

5. Attached hereto as Exhibit 2 is a true and correct copy of my website traffic reports which include content transfer analytics.

6. Attached hereto as Exhibit 3 is a true and correct copy of my email message to Applicant containing download links for serving responses and production, on 12/07/17, and related system messages confirming recipient downloads.

7. Attached hereto as Exhibit 4 is a true and correct copy of my correspondence sent to the Director of OED.

8. lawable.com, from IP Address 216.75.92.26, accessed my websites across several hours.

9. lawable.com accessed my websites, imivu.com and mivu.photos on 12/27/17. While there, lawable.com accessed the following webpages: Mivu Software; MiVu JARVIS; MiVu Telephone Services; MiVu Rural Residential Telephone and Internet Services; MiVu Unthink Impossible; Contact page; and MiVu. lawable.com accessed the main MiVu Software purchase and download page, but did not click on or access any one software product link for MiVu PPCV, MiVu Mogobile, MiVu EscapeVelocity.

10. lawable.com, from IP Address 216.75.92.26, accessed my software demonstration website between 12/27/17 and 01/17/2018, and 1.3 megabytes of aggregated and prioritized digital content was transferred from my sample software demonstration website service to a computer located at lawable.com's IP Address.

11. There exists five commonly known product levels: 1) core benefit; 2) generic products; 3) expected products; 4) augmented products; 5) potential products.

12. A generic product is representative of the expected and augmented products but it lacks unique branding and specific characteristics that ultimately drive its consumption.

13. It's a software. A generic computer software and computer hardware product would simply be a computer software product—any computer software product.

14. Generic products generally possess little value in and of themselves.

15. Augmented products are a result of design, configuration, public or private platforms and branding.

16. An example of an augmented software product would be MiVu, MiVu PPCV, MiVu Mogobile or MiVu EscapeVelocity.

17. My websites, purchase and download links are fully functional and have remained at a service performance level of 99.99% up time for the past several years.

I AFFIRM UNDER PENALTIES FOR PERJURY THAT THE FOREGOING  
STATEMENTS ARE TRUE.

Date: 02/02/2018

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Padraic McFreen

# **PM DECLARATION EXHIBIT 1**



### Software Certificates

(/certificates)

BACK

Search by IP, domain, or network owner for real-time threat data.

Search by IP, domain, or network owner for real-time threat data.

Malware Data

Reputation Support

Malware Data (/reputation\_center/malware\_rep)

Reputation Support (/reputation\_center/support)

Reputation Center (/reputation)

Reputation Center (/reputation)

Moflow (/moflow)

PE-Sig (/pesig)

Immunet (/immunet)

Teslacrypt Decryption Tool (/teslacrypt\_tool)

MBR Filter (/mbrfilter)

FIRST (/first)

LockyDump (/lockydump)

FreeSentry (/freesentry)

Flokibot Tools (/flokibot)

Synful Knock Scanner (/scanner)

Cisco Smart Install Scanner (/smart\_scanner)

ROPMEMU (/ropmemu)

BASS (/bass)

PyREBox (/pyrebox)

**IP ADDRESS** 216.75.92.26 (/reputation\_center/lookup?search=216.75.92.26)

**HOSTNAME** lawabel.com (/reputation\_center/lookup?search=lawabel.com)

**DOMAIN** lawabel.com (/reputation\_center/lookup?search=lawabel.com)

**NETWORK OWNER** Broadview Networks (/reputation\_center/lookup?search=Broadview%20Networks&org\_lookup=1)

Lookup data results for IP Address

Software (/software)
Vulnerability Information (/vulnerability_info)
Reputation Center (/reputation)
Library (/resources)
Support Communities (/community)

### LOCATION DATA

New York, United States (/reputation\_center/lookup?search=United%20States)

About (/about)
Careers (/careers)
Blog (http://blog.talosintelligence.com/)

### OWNER DETAILS

### REPUTATION DETAILS

Flokibot Tools (/flokibot)	<b>EMAIL REPUTATION</b>	Neutral
Synful Knock Scanner (/scanner)	<b>WEB REPUTATION</b>	Neutral
Cisco Smart Install Scanner (/smart_scanner)	<b>WEIGHTED REPUTATION</b>	Neutral
ROPMEMU (/ropmemu)	<b>SPAM LEVEL</b>	None
BASS (/bass)	<b>EMAIL VOLUME</b>	0.0
PyREBox (/pyrebox)	<b>VOLUME CHANGE</b>	0%

# BLACKLISTS

File2pcap (/file2pcap)

(/) BL.SPAMCOP.NET (HTTP://WWW.SPAMCOP.NET/BLACKLIST/BLACK&IP=216.75.92.26) Not Listed

CBL.ABUSEAT.ORG (HTTP://WWW.ABUSEAT.ORG/LOOKUP.cgi?IP=216.75.92.26) Not Listed

Software (/software)

Mutiny Fuzzer (/mutiny-fuzzer) Not Listed

PBL.SPAMHAUS.ORG (HTTP://WWW.SPAMHAUS.ORG/QUERY/BL?IP=216.75.92.26) Not Listed

Vulnerability Information

SBL.SPAMHAUS.ORG (HTTP://WWW.SPAMHAUS.ORG/QUERY/BL?IP=216.75.92.26) Not Listed

(/vulnerability)

Reputation Center

(/reputation)

BLACKLISTED No  
MailLawLabels (https://www.mail-law.com/contact.html#ml)

Reputation Center (/reputation)

## ADDITIONAL INFORMATION

Library (/resources)

Blacklist.org (/blacklist)

IP ADDRESSES WHOIS

EMAIL VOLUME HISTORY

Support Communities

(/community)

Moflow (/moflow)

Top IP Addresses used to send emails in 216.75.92.26 /24

About (/about)

PE-Sig (/pesig)

1 to 1 of 1 results

Careers (/careers)

Sort by:

IP Address

IP ADDRESS

HOSTNAME

FWD/REV DNS MATCH

LAST DAY VOL.

LAST MONTH VOL.

BLACKLISTS

Blog 216.75.92.29 (/reputation\_center/lookup?search=216.75.92.29) (http://blog.ta)

mail.lawabel.com (/reputation\_center/lookup?search=mail.lawabel.com)

Yes

0.0

2.6

No

LockyDump (/lockydump)

1 to 1 of 1 results

FreeSentry (/freesentry)

Flokibot Tools (/flokibot)

Synful Knock Scanner (/scanner)

Cisco Smart Install Scanner (/smart\_scanner)

ROPMEMU (/ropmemu)

BASS (/bass)

PyREBox (/pyrebox)

File2pcap (/file2pcap)

(/)

 Software (/software)
 Vulnerability Information (/vulnerability_info)
 Reputation Center (/reputation)
 Library (/resources)
 Support Communities (/community)
 About (/about)
 Careers (/careers)
 Blog (http://blog.talosintelligence.com/)

### Software (/software)

Receipt (/receipt)  
Mutiny Fuzzer (/mutiny\_fuzzer)

BACK

Score Generator (/score\_generator)  
Score Generator (/score\_generator)

Malware Definitions (Consolidated) (/malware\_definitions)  
Malware Definitions (Consolidated) (/malware\_definitions)

Reputation Center (/reputation)  
Reputation Center (/reputation)

AWBO Exercises (/awbo\_exercises)  
AWBO Exercises (/awbo\_exercises)

Moflow (/moflow)  
Moflow (/moflow)

PE-Sig (/pesig)  
PE-Sig (/pesig)

Immunet (/immunet)  
Immunet (/immunet)

Teslacrypt Decryption Tool (/teslacrypt\_tool)  
Teslacrypt Decryption Tool (/teslacrypt\_tool)

MBR Filter (/mbrfilter)  
MBR Filter (/mbrfilter)

FIRST (/first)  
FIRST (/first)

### Software (/software)

Reputation Center (/reputation\_center)

Vulnerability Information (/vulnerability\_info)

Microsoft Advisory Snort Rules (/ms\_advisories)

IP Blacklist Download (/documents/ip-blacklist)

Library (/resources)

AWBO Exercises (/awbo\_exercises)

Support Communities (/community)

About (/about)

Careers (/careers)

Blog (http://blog.talosintelligence.com/)

ThreatSource Newsletter (/newsletters)

Beers with Talos Podcast (/podcasts)

### CONNECT WITH US

 (https://twitter.com/talossecurity)

 (https://www.facebook.com/groups/TalosGroupatCisco/)

 (https://www.youtube.com/playlist?list=PLFT-9JpKjRTDn\_qtGN238gzyCJfaVzMqD)  (https://www.linkedin.com/grp/home?gid=8287731)

LockyDump (/lockydump)



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FreeSentry (/freesentry)

Flokibot Tools (/flokibot)

Synful Knock Scanner (/scanner)

Cisco Smart Install Scanner (/smart\_scanner)

ROPMEMU (/ropmemu)

BASS (/bass)

PyREBox (/pyrebox)

# **PM DECLARATION EXHIBIT 2**

01/17 at 03:52:26 PM	216.75.92.26	Chill & Hip Hop™ Top 12 SmashJams of the Week
01/17 at 03:51:52 PM	216.75.92.26	Chill & Hip Hop™ Top 12 SmashJams of the Week
01/17 at 03:51:41 PM	216.75.92.26	Chill & Hip Hop™ "Listen NOW!"
01/17 at 03:27:27 PM	216.75.92.26	MIVU®'s MIVU PPCV®
01/17 at 03:26:39 PM	216.75.92.26	Why me
01/17 at 03:26:32 PM	216.75.92.26	Driving
01/17 at 03:26:27 PM	216.75.92.26	MIVU®'s MIVU PPCV®
01/17 at 03:26:15 PM	216.75.92.26	MIVU®'s MIVU PPCV®
01/17 at 03:26:05 PM	216.75.92.26	MIVU® Chill & Hip Hop™ Free Music Service
01/17 at 03:25:18 PM	216.75.92.26	Chill & Hip Hop™ Top 12 SmashJams of the Week
01/17 at 03:24:42 PM	216.75.92.26	Chill & Hip Hop™ "Listen NOW!"
01/17 at 03:24:35 PM	216.75.92.26	MIVU® Chill & Hip Hop™ Free Music Service
01/17 at 03:24:22 PM	216.75.92.26	MIVU®'s MIVU PPCV®

## ACTIVITY LOG

12/27 at 04:57:32 PM	216.75.92.26	MiVu® Software
12/27 at 04:56:44 PM	216.75.92.26	MiVu® JARVIS BeeAware® 3.0
12/27 at 04:55:18 PM	216.75.92.26	MiVu® Telephone Services
12/27 at 04:55:11 PM	216.75.92.26	MiVu® Rural Residential Telephone and Internet Services
12/27 at 04:54:21 PM	216.75.92.26	MiVu® Unthink Impossible®
12/27 at 04:51:13 PM	216.75.92.26	Contact
12/27 at 04:51:08 PM	216.75.92.26	MiVu® Unthink Impossible®
12/27 at 04:50:55 PM	216.75.92.26	Contact
12/27 at 04:50:33 PM	216.75.92.26	MiVu® Unthink Impossible®
12/27 at 04:50:23 PM	216.75.92.26	Contact
12/27 at 04:50:22 PM	216.75.92.26	MiVu® Unthink Impossible®
12/27 at 04:50:07 PM	216.75.92.26	MiVu® Unthink Impossible®
12/27 at 04:48:29 PM	216.75.92.26	MiVu® Unthink Impossible®
12/27 at 04:48:26 PM	216.75.92.26	MiVu®
12/27 at 04:48:01 PM	216.75.92.26	MiVu® Unthink Impossible®
12/27 at 04:47:47 PM	216.75.92.26	MiVu®
12/27 at 04:47:41 PM	216.75.92.26	MiVu®
12/27 at 03:39:45 PM	216.75.92.26	MiVu®
12/27 at 12:48:09 AM	98.164.26.250	MiVu®

4.			216.75.92.26		1.3 MB	2	4.			14.143.0.166		95.6 MB	103
5.			136.33.63.131		1.2 MB	2	5.			97.42.65.125		48.7 MB	54
6.			81.98.229.153		27.8 MB	2	6.			61.12.78.132		40.1 MB	44
7.			2.50.149.86		652 KB	1	7.			14.143.0.166		34.7 MB	38
8.			50.201.95.250		7.2 MB	1	8.			88.99.58.156		28.3 MB	31
9.			97.42.65.125		48.7 MB	1	9.			81.98.229.153		27.8 MB	29
10.			61.12.78.132		40.1 MB	1	10.			172.56.13.231		21 MB	22
11.			138.201.252.234		1.1 GB	1	11.			99.189.104.119		9.2 MB	10
12.			97.42.64.132		1.2 MB	1	12.			185.78.62.74		8.5 MB	9
13.			99.198.219.229		1.7 MB	1	13.			61.12.78.132		6.5 MB	7
14.			37.210.201.50		961 KB	1	14.			50.201.95.250		7.2 MB	7
15.			99.189.104.119		9.2 MB	1	15.			97.42.64.132		1.2 MB	3
16.			61.12.78.132		6.5 MB	1	16.			37.210.201.50		961 KB	3
17.			83.110.0.152		1.9 MB	1	17.			99.198.219.229		1.7 MB	2
18.			88.99.58.145		960 KB	1	18.			83.110.0.152		1.9 MB	2
19.			172.56.13.231		21 MB	1	19.			136.33.63.131		1.2 MB	2
20.			185.78.62.74		8.5 MB	1	20.			184.98.255.17		1.4 MB	1
21.			119.224.22.123		282 KB	1	21.			216.75.92.26		1.3 MB	1
22.			88.99.58.156		28.3 MB	1	22.			88.99.58.145		960 KB	1
23.			184.98.255.17		1.4 MB	1	23.			119.224.22.123		282 KB	
24.			14.143.0.166		34.7 MB	1	24.			2.50.149.86		652 KB	

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# **PM DECLARATION EXHIBIT 3**



Padraic Cyril Mc Freen &lt;padraic.mcfreen@gmail.com&gt;

---

**Fwd: MiVu Supplemented Discovery Responses**

1 message

---

**Padraic McFreen** <pmcfreen@gmail.com>  
To: padraic.mcfreen@gmail.com

Mon, Jan 29, 2018 at 10:30 AM

Sent from my iPad

Begin forwarded message:

**From:** Padraic Cyril Mc Freen <padraic.mcfreen@gmail.com>  
**Date:** December 7, 2017 at 10:07:32 AM EST  
**To:** "SEYLER, J." <JBSeyler@lawabel.com>, docket@lawabel.com, leabelman@lawabel.com  
**Cc:** Padraic McFreen <pmcfreen@gmail.com>  
**Subject:** MiVu Supplemented Discovery Responses

Dear MS. Seyler:

Please see attached Supplemented Discovery Responses. Documents requested are available for download here:

<https://mivullc.exavault.com/share/view/215u-g0ffsnqr>

If you are unable to simply click on the link provided herein above, kindly copy and paste the link directly into your browser's window. To access the files, kindly provide the following:

- 1) email address;
- 2) password: 2017mivu2018akz4b.

The above provided link shall expire on 12/15/2017: 11:59:59pm PST.

Should you encounter technical difficulties concerning the link or the process of downloading these files, please do not hesitate to contact me immediately.

Regards,

Padraic McFreen  
(281) 736-0510

---

**2 attachments**

 **Supplemented MiVu's Responses to MiVue's RFI Discovery20171206.pdf**  
538K

 **MIVU Supplemented Responses to MIVUE RFP Discovery 20171206.pdf**  
529K



Padraic Cyril Mc Freen <padraic.mcfreen@gmail.com>

---

## Fwd: jbseyler@lawabel.com has accessed your sent files

1 message

---

**Padraic McFreen** <pmcfreen@gmail.com>  
To: padraic.mcfreen@gmail.com

Mon, Jan 29, 2018 at 10:27 AM

Sent from my iPad

Begin forwarded message:

**From:** ExaVault Notifications <[email@exavault.com](mailto:email@exavault.com)>  
**Date:** December 7, 2017 at 10:19:08 AM EST  
**To:** mivullc <[pmcfreen@gmail.com](mailto:pmcfreen@gmail.com)>  
**Subject:** [jbseyler@lawabel.com](mailto:jbseyler@lawabel.com) has accessed your sent files  
**Reply-To:** mivullc <[pmcfreen@gmail.com](mailto:pmcfreen@gmail.com)>



[jbseyler@lawabel.com](mailto:jbseyler@lawabel.com) has accessed your sent files



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Delete this notification to stop receiving these emails.



Padraic Cyril Mc Freen <padraic.mcfreen@gmail.com>

---

## Fwd: cedmonds@lawabel.com has accessed your sent files

1 message

---

**Padraic McFreen** <pmcfreen@gmail.com>  
To: padraic.mcfreen@gmail.com

Mon, Jan 29, 2018 at 10:31 AM

Sent from my iPad

Begin forwarded message:

**From:** ExaVault Notifications <[email@exavault.com](mailto:email@exavault.com)>  
**Date:** December 8, 2017 at 10:34:21 AM EST  
**To:** mivullc <[pmcfreen@gmail.com](mailto:pmcfreen@gmail.com)>  
**Subject:** [cedmonds@lawabel.com](mailto:cedmonds@lawabel.com) has accessed your sent files  
**Reply-To:** mivullc <[pmcfreen@gmail.com](mailto:pmcfreen@gmail.com)>



[cedmonds@lawabel.com](mailto:cedmonds@lawabel.com) has accessed your sent files



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# **PM DECLARATION EXHIBIT 4**

Padraic C. McFreen  
13357 Dumbarton Street  
Carmel, IN 46032

January 16, 2018

United States Patent & Trademark Office  
Office of E D  
Attention: Director, OED  
Mail Stop: OED  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RE.: USPTO Practitioner Threats and Abusive Communications; Pro-Se Plaintiff;  
Opposition Action No. 91228289; Discovery Coordination Communication**

Dear Director, OED:

During a recent telephone conversation with one of your attorneys on staff, I was encouraged to provide to you the accompanying email record of my most recent communication with opposing counsel, Abelman Frayne Schwab, specifically, Ned W. Branthover and Julie B. Seyer.

The purpose of the communication, discuss alleged deficiencies in some of my amended discovery responses. As you will likely conclude from your review of our communication via email, opposing counsel's behavior was not conducive to such discussions, hostile, and coercive, thus highly unprofessional.

As you will discover, I requested opposing counsel to include the TTAB due to its demands and threats. Opposing counsel responded with rationale contradictory to TTAB policies as of June 2017. Though likely outside the scope of your jurisdiction, opposing counsel forcefully and later with less force, insisted that I provide documentary evidence which, according to TTAB policies of June 2017, is not discoverable.

After review, should you require additional information from me, please do not hesitate to reach out to me via telephone, (281) 736-0510, or email, [pmcfreen@gmail.com](mailto:pmcfreen@gmail.com).

Thank you for your time.

Respectfully,

Padraic C. McFreen

Encl.