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

Proceeding no.	91264372
Party	Defendant Simple Design Ltd and Astral IP Enterprise Ltd.
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**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

Simple Design Ltd. and Astral IP Enterprise  
Ltd.,

Opposer,

vs.

Cucufish Tech Co., Limited,

Applicant.

Opposition No. 91264372 (parent case)

**Opposition No. 91267266**

Opposition No. 91268603

Serial No.: 90091943

**OPPOSERS' REPLY IN SUPPORT OF  
MOTION TO AMEND PLEADING**

COMES NOW, Opposers Simple Design Ltd (“Simple Design”) and Astral IP Enterprise Ltd. (hereinafter collectively referred to as “Opposers”), by and through their attorneys at Bayramoglu Law Offices LLC, hereby submits its reply in support of Opposers’ Motion to Amend the Notice of Opposition against Applicant Cucufish Tech Co., Limited (hereinafter “Cucufish”) in Opposition No. 91267266 (the “Opposition”).

**ARGUMENT**

Cucufish attempts to argue that Opposer have been aware of the newly alleged facts that Mr. Chun Lin Lin *orally* assigned the underlying mark and rights in Application No. 90091943 (“Cucufish’s Mark”) since at least October 15, 2020. This is simply a false statement, as will be explained in more detail later. Mr. Chun Lin Lin signed a declaration under penalty of perjury stating that he orally assigned Cucufish’s Mark to Cucufish, with the associated business and goodwill, in late July 2020. Declaration of Chun Lin Lin in Opposition to Opposers’ Motion to Amend Pleading (“Lin Decl.”), ¶ 5. However, at no point does Cucufish or Mr. Chun Lin Lin dispute the fact that Mr. Chun Lin Lin’s name as an individual can be seen in connection with Cucufish’s Mark, but not a single document shows Cucufish’s name being used with Cucufish’s Mark. Mr. Chun Lin Lin’s name as an individual can be seen on Cucufish’s own documentation as having uploaded the goods identified in

Cucufish's Mark and using Cucufish's Mark on August 28, 2020. Reply Declaration of David Silver ("Reply Decl."), ¶ 2. This is after both the alleged oral assignment in late July 2020 and after Cucufish's application filing on August 4, 2020. If Mr. Chun Lin Lin actually assigned Cucufish's Mark to Cucufish, *with the associated business and goodwill* as claimed, then there should be no further uses of Cucufish's Mark as an individual after the assignment. The evidence directly contradicts Mr. Chun Lin Lin's sworn declaration.

*a. Opposers' Proposed Amendment is Not Legally Futile*

Cucufish argues that an amendment is futile when the proponent cannot provide a colorable argument that the original or the amended claim will not survive a dispositive motion. However, Cucufish fails to provide an actual analysis of the allegations in the First Amended Notice of Opposition. 30 TTABVue 63-73. Cucufish does not dispute that Cucufish's name does not appear anywhere in connection with the goods. *Id.* at ¶ 47. Cucufish does not dispute that Mr. Chun Lin Lin's name does appear in connection with the use of Cucufish's Mark. *Id.* at ¶ 49. Cucufish does not dispute that there is not and never was any license agreement between Cucufish and Mr. Chun Lin Lin. *Id.* at ¶ 46. Opposers also allege that Cucufish never received a valid assignment from Mr. Chun Lin Lin. *Id.* at ¶ 44. Opposers further allege that Mr. Chun Lin Lin has retained all rights in Cucufish's Mark at all times. *Id.* at ¶ 50. Even if Cucufish disagrees with the allegations, that is insufficient to prevail on a dispositive motion, especially when considering Mr. Chun Lin Lin's own directly contradicted declaration.

As discussed above, Mr. Chun Lin Lin has declared under oath that Cucufish's Mark was assigned in late July 2020 along with the associated business and goodwill, yet continued to personally upload the goods using Cucufish's Mark under his own name as an individual on August 28, 2020. Cucufish attempted to apply for Cucufish's Mark on August 4, 2020, well before Mr. Chun Lin Lin's continued individual use. Cucufish is now alleging that the rights *in the pending application* were assigned prior to the filing of the application. That is simply not supported by the evidence. Evidence

that Cucufish itself supplied. Reply Decl. at ¶ 2. Cucufish's own evidence directly contradicts Mr. Chun Lin Lin's declaration. Therefore, there was clearly no valid assignment *before* the application for Cucufish's Mark was filed by Cucufish. Any subsequent assignment would have needed to be in writing as it involves the content in a pending application. However, no such subsequent assignment is argued. Even if 15 U.S.C. § 1060(a)(3) and TMEP 501.02 do not apply, the fact remains that there was no valid assignment, Cucufish is not the rightful owner of Cucufish's Mark, and was certainly not the rightful owner as of Cucufish's Mark as of the application filing date.

Cucufish also attempts to rely on the self-serving testimony of Mr. Chun Lin Lin's declaration and wrongfully believes that such a bare bones declaration "lays to rest Opposers' argument." Quite the contrary, as Cucufish either conveniently or intentionally left out the following sentence in McCarthy on Trademarks and Unfair Competition: "Requiring strong evidence to establish an assignment is appropriate both to prevent parties from using self-serving testimony to gain ownership of trademarks and to give parties incentive to identify expressly the ownership of the marks they employ." J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, §18:4 (5th ed. 2019); *Doebblers' Pennsylvania Hybrids, Inc. v. Doebler*, 442 F.3d 812, 78 U.S.P.Q.2d 1509 (3d Cir. 2006), as amended, (May 5, 2006) *TMT North America, Inc. v. Magic Touch GmbH*, 124 F.3d 876, 884, 43 U.S.P.Q.2d 1912 (7th Cir. 1997) ("In this case, however, both the documentary evidence and oral testimony are ambiguous and contradictory." Evidence did not prove an assignment of trademarks).

Mr. Chun Lin Lin also identifies himself as the individual that continues to manage and update the goods associated with Cucufish's Mark. Lin Decl. at ¶ 6; Declaration of Jie (Lisa) Li in Opposition to Opposers' Motion to Amend Pleading ("Li Decl.") at ¶ 3. No person, other than Mr. Chun Lin Lin, has been identified as being connected to Cucufish's Mark or the goods associated therewith. Li Decl. at ¶ 2. Mr. Chun Lin Lin never fully relinquished control of Cucufish's Mark and continued to personally manage the developer account and upload the products under his name alone. Not only is

Mr. Chun Lin Lin's declaration directly contradicted by the evidence, but the incredibly sparse declaration filed by Cucufish to support its position is specifically the type of self-serving testimony of an oral assignment that the Courts have repeatedly found to be insufficient. Cucufish's reliance on this meager testimony is further proof that Cucufish entirely lacks the strong evidence required to establish an oral assignment.

Therefore, the allegations remain that there was no valid assignment, that there was no assignment in writing after an application was filed, there is not and never was a valid license agreement, that Cucufish is not the rightful owner of Cucufish's Mark, and that Cucufish was not the rightful owner at the time of filing the trademark application for Cucufish's Mark. Cucufish's focus on a singular statement regarding the form of the assignment rather than the overall argument as to the validity of the assignment as a whole is improper. Cucufish has failed to prove that such an amended ground would be futile and could not overcome a dispositive motion.

*b. Opposers' Motion is Not Untimely*

Cucufish focuses on pleadings and statements that Mr. Chun Lin Lin "assigned" the mark, but at no time do *any* of Cucufish's statements ever mention whether the claimed assignment was oral or written. Reply Decl. at ¶ 3. Cucufish claims "Opposers incorrectly assumed that an assignment of the N Logo had to be in writing." Actually, Cucufish is the one that first indicated that there were relevant documents relating to the assignment to be discovered. See Exhibit A to Li Decl. at pg. 3. Cucufish specifically identifies in its disclosures "*Documents* related to the *transfer and assignment* of trademark rights *from Chun Lin Lin to Applicant*." *Id.* (emphasis added). Cucufish is the one that first claimed that documents relating to the assignment existed. Opposers had no reason to believe that Cucufish and Cucufish's counsel were lying about the existence of documents relating to the assignment this entire time.

With Cucufish claiming an assignment of Cucufish's Mark and the initial disclosures mentioning documents relating to a claimed valid assignment, there was no reason for Opposers to dig

much further into the ownership of Cucufish's Mark at the time. Assignment and license back agreements are useful structures relating to trademarks. McCarthy on Trademarks at § 18:9. "The Federal Circuit has characterized an assignment and license-back as a 'well-settled commercial practice' in which use by the licensee inures to the benefit of the licensor-assignee." *Id.*; *Visa, U.S.A., Inc. v. Birmingham Trust Nat'l Bank*, 696 F.2d 1371, 216 U.S.P.Q. 649 (Fed. Cir. 1982), cert. denied, 464 U.S. 826, 78 L. Ed. 2d 104, 104 S. Ct. 98, 220 U.S.P.Q. 385 (1983). "Other courts have similarly upheld the validity of various assignment and license back transactions." *Id.*; *Syntex Laboratories, Inc. v. Norwich Pharmacal Co.*, 315 F. Supp. 45, 166 U.S.P.Q. 312 (S.D.N.Y. 1970), aff'd on other grounds, 437 F.2d 566, 169 U.S.P.Q. 1 (2d Cir. 1971) (assignee's grant-back of license upheld); *Raufast S.A. v. Kicker's Pizzazz, Ltd.*, 208 U.S.P.Q. 699 (E.D.N.Y. 1980) (assignment and license back was upheld); *Sands, Taylor & Wood v. Quaker Oats Co.*, 18 U.S.P.Q.2d 1457 (N.D. Ill. 1990), aff'd in part and rev'd in part, 978 F.2d 947, 24 U.S.P.Q.2d 1001 (7th Cir. 1992), cert. denied, 507 U.S. 1042, 123 L. Ed. 2d 497, 113 S. Ct. 1879 (1993), aff'd in part and vacated in part, remanded, 34 F.3d 1340, 32 U.S.P.Q.2d 1065 (7th Cir. 1994), corrected, substituted op., in part, reh'g denied, in part, 44 F.3d 579, 33 U.S.P.Q.2d 1543 (7th Cir. 1995) (two assignment and license-back transactions were analyzed and upheld as not being assignments in gross); *Brewski Beer Co. v. Brewski Brothers Inc.*, 47 U.S.P.Q.2d 1281 (T.T.A.B. 1998) (upholding validity of an assignment and license back of the name of a bar in New York City). So even with Mr. Chun Lin Lin's continued personal use, Opposers had no reason to question the existence of the written documentation that Cucufish claimed in its initial disclosures. Reply Decl. at ¶ 4.

Cucufish argues that Opposer did not try to depose Mr. Chun Lin Lin about how he assigned Cucufish's Mark. As mentioned above, there did not seem to be any reason to at the time. Furthermore, as can be seen from Mr. Chun Lin Lin's declaration and Cucufish's handling of these proceedings to date, Opposers had little faith that anything from the deposition could be trusted. *Id.* at ¶ 5. As a foreign citizen, Mr. Chun Lin Lin would need to be deposed by written questions. TBMP § 404.03(b).

Opposing counsel would see all of the questions beforehand and would be able to coach Mr. Chun Lin Lin in the responses well in advance. Such a deposition with a party and witness that has proven to be untrustworthy throughout these consolidated proceedings would have no benefit. Reply Decl. at ¶ 5.

Cucufish claims Opposers should have known the assignment existed, but that is not the issue. The *validity* of the assignment is what has only recently come to light, and could not have been known due to Cucufish's own prior misrepresentations that there were documents relating to the assignment and transfer of rights. The bottom line is that Cucufish cannot make false statements in its initial disclosures and then claim prejudice when a party was acting in reliance on those false statements.

Opposers filed the present motion as soon as reasonably practicable after discovering that Cucufish had been lying about the existence of documents and the validity of the assignment all along. *Id.* at ¶ 6. Ironically, the issue of Cucufish's ownership was brought to light because of Cucufish's own retaliatory tactics. *Id.* at ¶ 7. Cucufish only brought Opposition No. 91268603 to retaliate against Opposers for opposing Cucufish's Mark. *Id.* at ¶ 8. Opposers filed a motion to dismiss Cucufish's retaliatory opposition, which was granted even after Cucufish's first attempted revisions. *Id.*; 12 TTABVUE. Only by making knowingly false statements regarding the ownership of Opposers' trademark was Cucufish able to maintain its retaliatory and harassing opposition. *Id.* Cucufish made allegations regarding the developer account name on the mobile application being different from the trademark owner's name as a main basis for the opposition. *Id.* at ¶ 9. Cucufish's name is not seen anywhere in connection with its products, so Cucufish was not even following the same standards it was using to challenge Opposers' trademark. *Id.* Since the Board deemed the second amended opposition to be sufficiently pled, Opposers began looking into Cucufish's Mark and began pushing the issue in discovery. *Id.* If a mere name difference was enough for Cucufish to challenge ownership in a mark, then why was Cucufish not using its own name in connection with its own mark? If Cucufish uses the same practices as Opposers yet claims proper ownership of its own mark, then Cucufish's opposition basis would fall apart. This required looking into Cucufish's ownership more closely.

Opposers had to chase Cucufish for proper discovery responses and document production, which ultimately culminated in a motion to compel due to Cucufish's disregard for its discovery obligations and frustration of the discovery process. *Id.* at ¶ 10; 19 TTABVUE. The motion to compel specifically included information about the assignment that Cucufish was apparently desperately trying to hide. *Id.*; 19 TTABVUE 11, 41, 58. Despite denying the motion overall, the Board points out that Opposers were entitled to discovery on Cucufish's Mark and Cucufish needed to respond *if it had not already provided the responsive information in the other consolidated cases*. 23 TTABVUE 6-7. It took Opposers many more months before Cucufish finally provided the discovery responses that revealed Cucufish's deception regarding the nature of the assignment. Reply Decl. at ¶ 10. Had Cucufish provided this information in any of the consolidated cases earlier, Cucufish would not have had to provide the supplemental responses about the oral assignment. Since Cucufish had not previously provided substantive responses about the assignment, Cucufish was forced to finally reveal the truth about the claimed assignment after all of this time. Cucufish is now attempting to claim dilatory conduct by Opposers based on its own false representations and disruptions of the discovery process. Such a tactic should not be entertained.

Cucufish incorrectly believes that the present motion to amend is untimely because there is no valid basis for the amendment. First of all, this is a futility argument that has already been discussed above. Second, Cucufish's reliance on Mr. Chun Lin Lin's self-serving declaration is misplaced, also as discussed above. Cucufish conclusory states that the assignment is valid. It is not. The issue of validity of the assignment is what was only recently discovered due to Cucufish's misrepresentations and avoidance of its discovery obligations for as long as possible.

*c. Opposers' Motion is Not Prejudicial to Cucufish*

Cucufish claims that allowing the amended pleading would necessarily reopen discovery and would unfairly prejudice Cucufish's preparation for trial. This is not accurate. There is no need for any additional discovery because Cucufish has no documents relevant to this issue. The alleged assignment



is oral. There are no documents to discover. The documents challenging the validity of the assignment have already been introduced by Cucufish in its own claim for entitlement to a statutory cause of action. There is nothing else that needs to be provided in discovery on this issue. Cucufish completely fails to explain at all exactly how their preparation for trial has been prejudiced. As stated above, Cucufish's own deceitful disclosures and dilatory discovery conduct created any delay in the proceedings Cucufish is now attempting to claim.

As a confusing basis for Cucufish's argument, Cucufish complains that discovery in the '603 Opposition was about to close on August 30, 2023, but was suspended again due to Opposers filing this Motion on August 25, 2023. However, Cucufish conveniently omits the fact that Cucufish is the one that wanted discovery to continue this long in the first place. 24 TTABVUE. Opposers *opposed* Cucufish's motion to extend the discovery deadlines when Astral IP was joined in these matters. 25 TTABVUE. Opposers wanted to move forward with the trial phase. It was Cucufish who wanted to extend the discovery deadline.

Cucufish also conveniently omits the fact that Opposers filed a concurrent motion for summary judgment that includes the '603 case, which was not suspended, and would have moved the trial phase dates back even if Opposers waited another five days to file its motions.

Furthermore, Opposers have responded to Cucufish's discovery requests, but filed the present motion and motion for summary judgment *prior* to receiving Cucufish's responses to Opposers' own propounded requests for admissions. Reply Decl. at ¶ 11. Opposers specifically provided its own responses beforehand so as not to prejudice Cucufish, despite Cucufish's own required discovery responses being delayed for months while these motions are resolved.

Cucufish also threatened its own motion to compel discovery in a meet and confer correspondence and attempted to improperly notice depositions prior to the discovery cutoff deadline. *Id.* at ¶ 12. Cucufish never responded to Opposers' emails on these topics or otherwise attempted to contact Opposers counsel in any way to discuss these issues. *Id.* There is no way for Opposers to know

what Cucufish would file or when. As far as Opposers are concerned, Cucufish was preparing its own motions to be filed before the discovery cutoff and are merely complaining now because Opposers filed its motions first. Opposers are not required to guess what Cucufish might or might not do. Opposers simply filed the present motions as soon as practicable.

Oddly, after complaining about unnecessarily extending the case and delaying the trial phase, Cucufish argues that Opposers improperly filed its motions as the '266 Opposition was suspended. Again, Cucufish completely ignores the fact that this motion to amend was filed in conjunction with a motion for summary judgment that involves the '603 case, which was not suspended. Opposers are trying to dispose of these matters earlier with the summary judgment motion rather than delay these proceedings for longer than necessary. Apparently, Cucufish would have wanted Opposers to delay more before bringing its motions.

Parties are allowed to file motions to amend to conform to trial evidence. TBMP § 507.03; Fed. R. Civ. P. 15(b). However, Opposers did not wait until trial to bring the argument and filed the motion as soon as reasonably practical. Whether Opposers waited another five days to file the motions or not would not create a substantial difference in the timing of these proceedings as the pending summary judgment motion suspends the proceedings anyway. No matter how you look at it, Cucufish is not prejudiced by anything in this motion.

*d. This Motion is Not for an Improper Purpose*

Cucufish again states that there is no legitimate basis for the amendment and that the assignment is valid. As explained above, Cucufish is wrong on both accounts.

Cucufish's allegations that this motion was brought in bad faith is amusing considering Cucufish's own actions of lying in its initial disclosures, refusing to cooperate in discovery for as long as possible, delaying the case with their own discovery extension, and filing a knowingly illegitimate and retaliatory opposition with knowingly false statements.

Opposers are wrongfully arguing that Opposers are merely making a "tit-for-tat" maneuver.

Such could not be further from the truth. As explained above, Cucufish's own allegations from its own opposition were seen as sufficient to move the opposition forward. Cucufish's allegations were based off conduct that Cucufish was also employing. Despite that fact, Opposers sought *evidence* of the claims and allegations, unlike Cucufish who merely filed a baseless opposition and then amended the pleading as many times as it took to get something through. Furthermore, Cucufish's Mark was already being opposed, this is simply adding another ground based on evidence obtained through discovery, which would have been included much earlier had Cucufish provided truthful and accurate information from the beginning.

### **REQUEST FOR RELIEF**

Applicant moves this Board for an Order granting the present motion and ruling that the attached First Amended Notice of Opposition is now the operative pleading in this Opposition.

DATED this 26th day of September 2023.

/s/ David Silver

**DAVID SILVER, ESQ.**  
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*Attorney for Opposers*

**CERTIFICATE OF SERVICE**

I, David Silver, hereby certified that a true correct copy of the foregoing **OPPOSERS'**  
**REPLY IN SUPPORT OF MOTION TO AMEND PLEADING** was served upon Opposer by  
email on this day of September 26, 2023 at the following address:

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By: /s/ David Silver  
David Silver

**UNITED STATES PATENT AND TRADEMARK OFFICE  
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Simple Design Ltd. and Astral IP Enterprise  
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Opposition No. 91264372 (parent case)

**Opposition No. 91267266**

Opposition No. 91268603

Serial No.: 90091943

**REPLY DECLARATION OF DAVID SILVER, ESQ. IN SUPPORT OF OPPOSERS’  
MOTION TO AMEND PLEADING**

I, David Silver, declare under penalty of perjury that the following is true and correct:

1. I am the attorney for Simple Design Ltd (“Simple Design”) and Astral IP Enterprise Ltd. (hereinafter collectively referred to as “Opposers”) in this proceeding. I am over the age of 18 years. I have personal knowledge of the facts contained in this Declaration, and if called as a witness could and would testify competently to the facts as stated herein.
2. Mr. Chun Lin Lin’s name as an individual can be seen on Cucufish’s own documentation as having uploaded the goods identified in Cucufish’s Mark and using Cucufish’s Mark on August 28, 2020. Attached as **Exhibit 1** is a true and correct copy of Cucufish’s documents with the CFF (Cucufish) Bates numbers.
3. At no time do any of Cucufish’s statements, whether in the pleadings or prior discovery responses, mention whether the claimed assignment was oral or written.

4. As assignments and license back agreements are fairly common and widely accepted, even with Mr. Chun Lin Lin's continued personal use, Opposers had no reason to question the existence of the written documentation that Cucufish claimed in its initial disclosures.
5. Opposers have struggled to obtain responsive and accurate information from Cucufish. Cucufish's resistance to cooperating in the discovery process has given Opposers little faith that anything from a deposition based on written questions from Cucufish's claimed witness could be trusted. A deposition where Cucufish knew all of the questions in advance would have no benefit.
6. Opposers filed the present motion as soon as reasonably practicable after discovering that Cucufish had been lying about the existence of documents and the validity of the assignment.
7. The issue of Cucufish's ownership was brought to light because of Cucufish's own retaliatory tactics.
8. Cucufish brought Opposition No. 91268603 for the sole purpose of retaliating against Opposers for opposing Cucufish's Mark. Opposers filed a motion to dismiss Cucufish's retaliatory opposition, which was granted even after Cucufish had already attempted initial revisions. Cucufish only overcame the motion to dismiss by making knowingly false statements regarding the ownership of Opposers' trademark.
9. To survive the dismissal of Opposition No. 91268603 Cucufish made allegations regarding the developer account name on the mobile application being different from the trademark owner's name. However, Cucufish does not use its own name anywhere in connection with its products. Cucufish was clearly not following the same standards it was using to challenge Opposers' trademark. Since the Board deemed the second amended opposition to be sufficiently pled, Opposers began looking into Cucufish's ownership of its own mark and began pushing the issue in discovery.

10. Opposers had to chase Cucufish for proper discovery responses and document production, which ultimately culminated in a motion to compel due to Cucufish's disregard for its discovery obligations and frustration of the discovery process. The motion to compel specifically included information about the assignment that Cucufish was apparently desperately trying to hide. After the ruling on the motion to compel in January of 2023, Cucufish did not provide the relevant responses until August of 2023, approximately seven months later. These responses are what finally revealed Cucufish's deception regarding the nature of the assignment.
11. Opposers have responded to Cucufish's discovery requests, but filed the present motion and motion for summary judgment *prior* to receiving Cucufish's responses to Opposers' own propounded requests for admissions. Attached as **Exhibit 2** is a true and correct copy of the correspondence regarding Opposers' discovery responses and its own propounded requests that were delayed due to the motions.
12. Cucufish also threatened its own motion to compel discovery in a meet and confer correspondence and attempted to improperly notice depositions prior to the discovery cutoff deadline. Cucufish never responded to Opposers' emails on these topics or otherwise attempted to contact Opposers counsel in any way to discuss these issues. Attached as **Exhibit 3** is a true and correct copy of the correspondence regarding Cucufish's claimed discovery issues with Opposers.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 26th day of September, 2023 at Las Vegas, Nevada.

By:           /s/ David Silver            
DAVID SILVER, ESQ.

**Exhibit “1”**

**Exhibit “1”**



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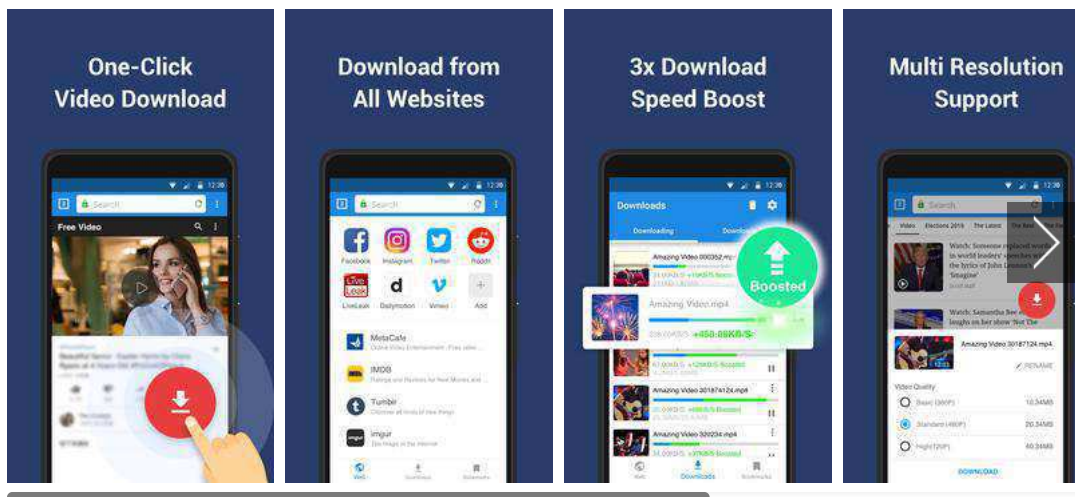
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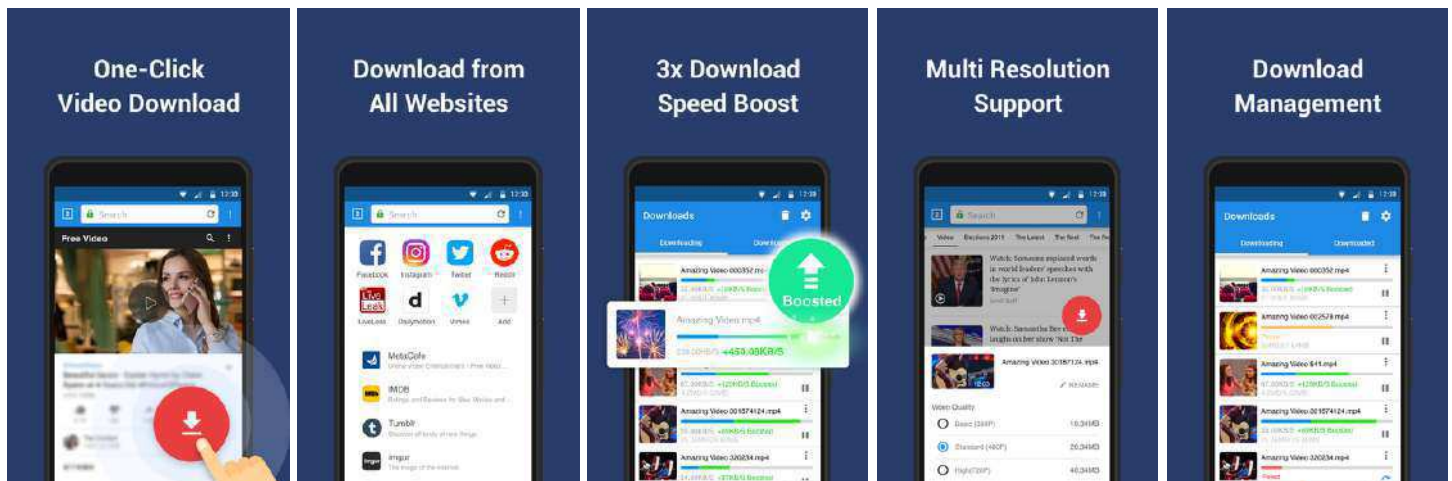
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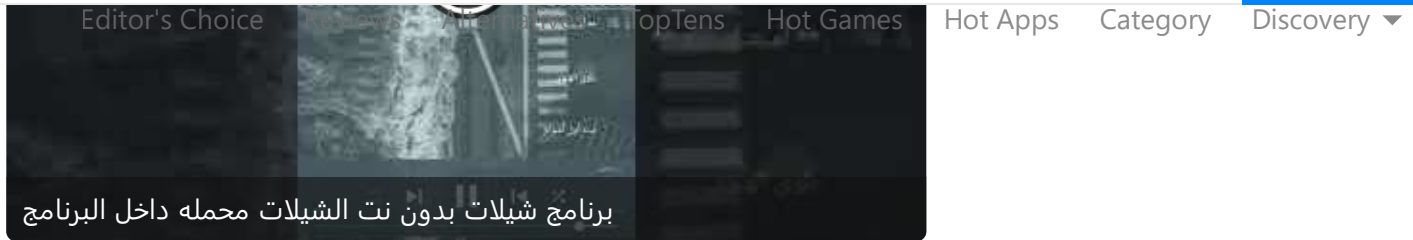
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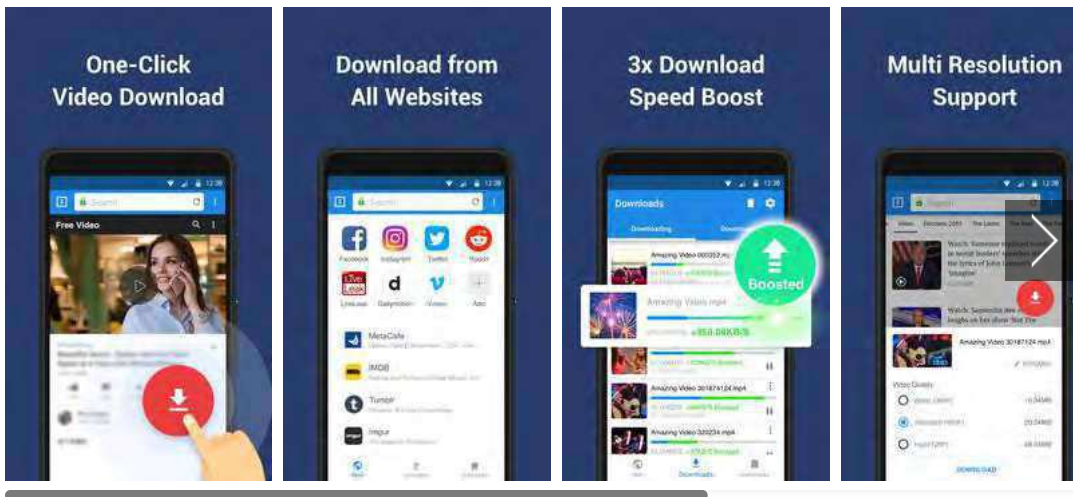
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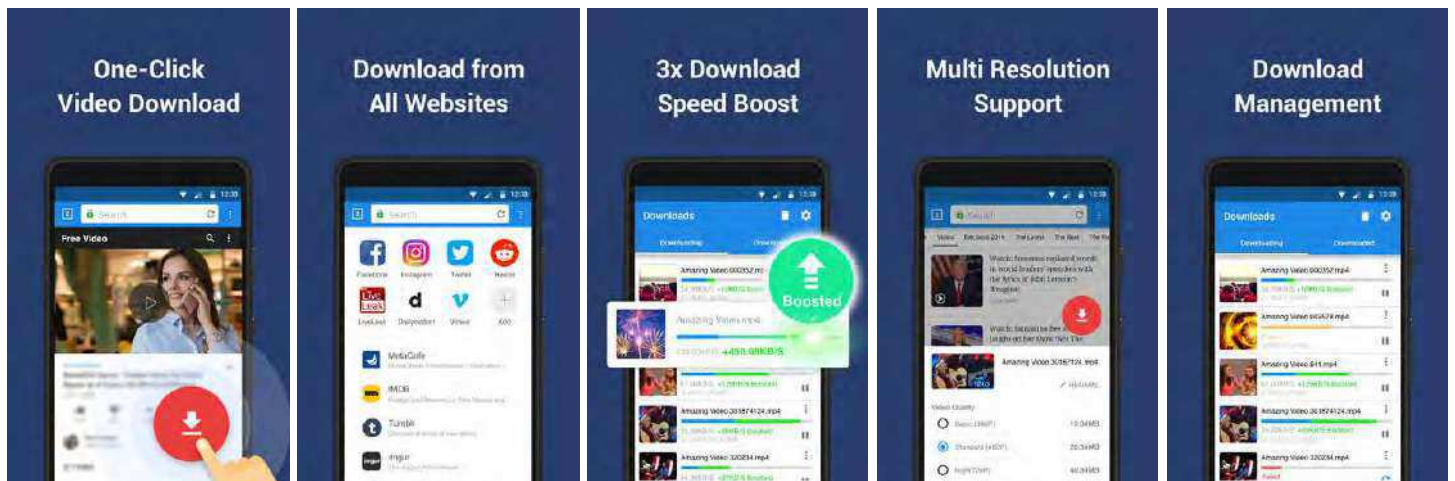
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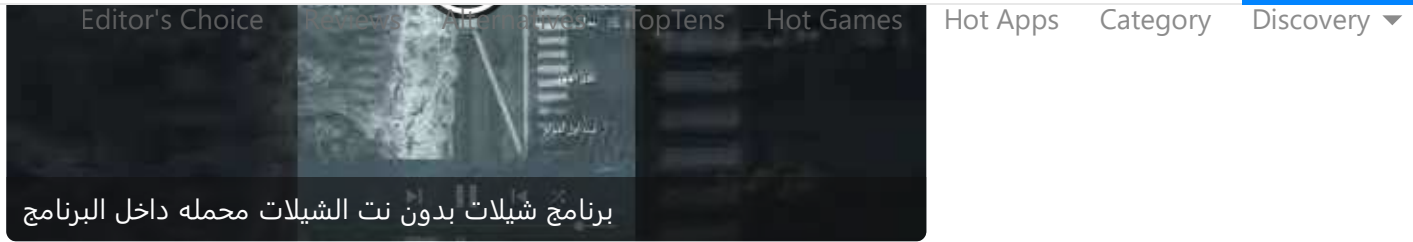
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**Exhibit “2”**

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David Silver <david@bayramoglu-legal.com>

Fri 8/25/2023 6:29 PM

To: lil@gtlaw.com <lil@gtlaw.com>; TM@bayramoglu-legal.com <tm@bayramoglu-legal.com>

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Hello Lisa,

Please see attached Simple Design's and Astral's responses to your July 27, 2023 discovery requests.

Sincerely,  
David Silver

**DAVID  
SILVER**  
Attorney-at-Law

Admissions: California & Nevada

  
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**Lisa Li**

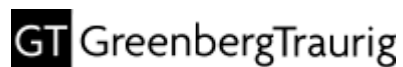
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**Exhibit “3”**

**Re: Simple Design/Astral IP Deficient Discovery Responses - US Opposition No. 91268603**

David Silver <david@bayramoglu-legal.com>

Fri 8/18/2023 3:52 PM

To: lil@gtlaw.com <lil@gtlaw.com>

Cc: TM@bayramoglu-legal.com <tm@bayramoglu-legal.com>; Nazly Bayramoglu <nazly@bayramoglu-legal.com>; Deniz Bayramoglu <deniz@bayramoglu-legal.com>; Gokalp Bayramoglu <gokalp@bayramoglu-legal.com>; candy@bayramoglu-legal.com <candy@bayramoglu-legal.com>; letitia@bayramoglu-legal.com <letitia@bayramoglu-legal.com>

 1 attachments (93 KB)

20230818 Response to Meet and Confer Letter from Cucufish.pdf;

Hello Lisa,

Please see the attached response letter to your meet and confer. We are open to setting up a time next week to discuss further if you would like.

Sincerely,  
David Silver

**DAVID  
SILVER**  
Attorney-at-Law

Admissions: California & Nevada



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EVERY PERSON WHO  
WALKS THROUGH  
OUR DOOR IS  
IMPORTANT TO US

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**From:** David Silver <david@bayramoglu-legal.com>

**Sent:** Monday, August 14, 2023 12:44 PM

**To:** lil@gtlaw.com <lil@gtlaw.com>

**Cc:** TM@bayramoglu-legal.com <tm@bayramoglu-legal.com>; Nazly Bayramoglu <nazly@bayramoglu-legal.com>; Deniz Bayramoglu <deniz@bayramoglu-legal.com>; Gokalp Bayramoglu <gokalp@bayramoglu-legal.com>; candy@bayramoglu-legal.com <candy@bayramoglu-legal.com>

**Subject:** Re: Simple Design/Astral IP Deficient Discovery Responses - US Opposition No. 91268603

Hello Lisa,

We will review your letter and respond in due course.

As for the deposition of Xiaofang Zhang, you never noticed the deposition. You attempted to subpoena the witness and improperly bypass the deposition process, which we objected to in its entirety. You did

not follow up afterwards, you did not correct the issues, and you never appropriately noticed the deposition.

Furthermore, your request for a deposition now is improper. Discovery closes on August 31, 2023, yet you are attempting to take the deposition in September. Under TBMP § 404.03(b), depositions of persons residing in a foreign country must be taken on written questions.

Under TBMP § 404.07(b), discovery depositions must be both properly noticed and taken during the discovery period. You have not properly noticed the deposition by written questions nor are you proposing the deposition to be taken during the discovery period.

You also know as well as I do that China does not permit the taking of testimony of its citizens within its borders. We would have to coordinate a time for our client to go elsewhere for the deposition. This is certainly not feasible in such a short amount of time.

These cases have all been going on for over 2 years now. For the parent case, just under three full years. You have had more than adequate time to properly notice our client's deposition in a timely manner and failed to do so. Therefore, we object to your prior and present improper notice of deposition for our client. If you would like to take the testimony deposition of Xiaofang Zhang during the trial phase, we can circle back during that time using the proper procedure.

Sincerely,  
David Silver

DAVID  
SILVER  
Attorney-at-Law

Admissions: California & Nevada

  
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**From:** lil@gtlaw.com <lil@gtlaw.com>

**Sent:** Friday, August 11, 2023 2:21 PM

**To:** David Silver <david@bayramoglu-legal.com>

**Cc:** TM@bayramoglu-legal.com <tm@bayramoglu-legal.com>; Nazly Bayramoglu <nazly@bayramoglu-legal.com>; Deniz Bayramoglu <deniz@bayramoglu-legal.com>; Gokalp Bayramoglu <gokalp@bayramoglu-legal.com>; candy@bayramoglu-legal.com <candy@bayramoglu-legal.com>

**Subject:** Simple Design/Astral IP Deficient Discovery Responses - US Opposition No. 91268603

Hi David,

Please see attached Cucufish's letter regarding Simple Design's deficient responses to Cucufish's June 15, 2022 discovery requests.

In addition, now that the proceedings have resumed, Cucufish wishes to arrange for the deposition of Xiaofang Zhang as noticed in September 2022. Please provide the dates and times in September when Mr./Ms. Zhang can be made available.

Regards,

**Lisa Li**

Shareholder

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