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

Proceeding	92066765
Party	Plaintiff Ing. Khachatur Mkrtchyan
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Submission	Other Motions/Papers
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Attachments	Interrogatories.pdf(150774 bytes)

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

KHACHATUR MKRTCHYAN

Petitioner,

v.

Proceeding No: 92066765

BIOSTAR TECHNOLOGY INTERNATIONAL, LLC,

Registrant.

PETITIONER’S FIRST SET OF INTERROGATORIES TO REGISTRANT

In accordance with Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, I, Khachatur Mkrtchyan, ("Petitioner"), requests that Biostar Technology International, LLC, ("Registrant") answer the following interrogatories under oath, subject to the following definitions.

DEFINITIONS

As used herein, the term “Petitioner” includes Khachatur Mkrtchyan, he's predecessors in interest, and all of its subsidiaries and affiliated companies, and the officers, directors, employees, agents and representatives thereof.

As used herein, the term “Registrant” includes Biostar Technology International, LLC, Ulysses Angulo, he’s predecessors in interest, and all of its subsidiaries and affiliated companies, and the officers, directors, employees, agents and representatives thereof.

As used herein, the term “Documents” includes, but is not limited to, all writings, notes, notations, correspondence, invoices, contracts, purchase orders, memoranda, books, pamphlets, publications, studies, reports, labels, packaging, artwork, tear sheets, flyers, brochures, proofs, displays, photographs, videotapes, models, films, drawings, sketches, illustrative materials, magnetic recording tapes, microfilms, and other storage means by which information is retained in retrievable form, and all other materials, whether printed, typewritten, handwritten, recorded or reproduced by any mechanical, electronic or magnetic process.

The following interrogatories shall be deemed to seek answers as of the date hereof, but shall be deemed to be continuing so that any additional information relating in any way to these interrogatories which Registrant acquires or which becomes known to Registrant up to and including the time of trial shall be furnished to Petitioner immediately after such information is first acquired or becomes known.

As used herein, the terms “identify” and “state the identity of” shall mean a complete identification to the full extent known or ascertainable by Registrant, whether or not in the possession of Registrant and whether or not alleged to be privileged, including the following information:

1. The present depository or depositories and the name(s) and address(es) of the person(s) having custody of any item to be identified, unless the item is a public document or person;
2. Where the item to be identified is a person, his/her full name, address, job title and present employer;
3. Where the item to be identified is a document or paper, its character, title, date, addressee or recipient, and author, signatory, or sender;
4. Where the item to be identified is printed material, its title, author, publication date, volume and the relevant page numbers. The term “person” shall mean and include any natural person, business organization or entity such as corporation, partnership or the like.

In the following interrogatories, if a privilege is alleged as to information or materials or if an interrogatory is otherwise not answered in full, state the specific grounds for not answering in full and answer said interrogatory to the extent to which it is not objected, including the identification of all information or materials for which privilege is claimed and the specific nature of any such privilege.

As used herein, “and” as well as “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all documents which might otherwise be construed to be outside its scope.

As used herein, the singular shall include the plural, and the present tense shall include the past tense.

As used herein, the DIACOM mark includes any and all marks comprising DIACOM alone or in combination, or any similar mark.

INTERROGATORIES

1. Identify each officer and managing agent of Registrant, giving each officer's and managing agent's name, address, title and duties with respect to Registrant.

2. Identify each product and/or service provided by Registrant prior to 01/06/2005 and list the mark under which each product and/or service was provided, the dates during which each product and/or service was provided, annual sales for each year each product and/or service was provided, the amount spent annually on advertising each product and/or service, and the geographic area in which each product and/or service was advertised, provided and/or sold.

3. Identify and describe each product and/or service sold and/or distributed by Registrant under the designation DIACOM.

4. State the exact date(s) on which Registrant will rely as to when its use of the term DIACOM commenced in connection with the sale or distribution of each product and/or service specified in answer to above Interrogatory No. 3.

5. Identify all documents, purchase orders, invoices, labels, flyers, brochures, other advertising or any writing whatsoever which Registrant will rely upon to establish the date(s) specified in answer to above Interrogatory No. 4.

6. With respect to the first use(s) of DIACOM in connection with the sale of each product and/or service identified in above Interrogatory No. 3, state:

(a) Each manner in which the term DIACOM was used, e.g. by affixing to containers, labels, or in newspaper advertising or fliers;

(b) If the designation DIACOM was printed on containers for the product or on labels, the name and address of the person(s) or organization(s) which printed them;

(c) If the designation DIACOM was used in brochures or fliers, the name and address of the person(s) or organization(s) which printed them;

(d) If the designation was used in media advertising, the name and address of the person(s) or organization(s) which advertised them;

(e) Whether the product and/or service was sold;

(f) Whether the product and/or service was offered free of charge;

(g) The name and address of the person(s) or organization(s) to whom the product and/or service was sold;

(h) Whether Registrant itself manufactured each of the product(s) sold and/or distributed under the designation DIACOM.

(i) Whether Registrant itself provided the service(s) sold under the designation DIACOM.

(j) Whether the sale of each product or service under the designation DIACOM has been continuous from each date specified in above Interrogatory No. 4 to the present;

(k) If the answer to Interrogatory 6, including any portion thereof, is in the affirmative, state whether the circumstances that are described in answer to Interrogatory 6 prevailed throughout the period beginning on the date identified in above Interrogatory 4;

(l) If the circumstances described in the answer to Interrogatory 6, including any portion thereof, did not prevail throughout the period(s) beginning on the date identified in above Interrogatory 4, state in detail how they changed, providing specific dates and names wherever requested;

(m) If the answer to Interrogatory 6(j) is in the negative, state the periods of time during which the term DIACOM was not used by Registrant in connection with the sale of each product and/or service.

7. State why Registrant selected the term DIACOM as a trademark for each product and/or service specified for the trademark №5011919.

8. Identify each person who was primarily responsible for selecting the term DIACOM as a product and/or service mark.

9. Identify each person involved in the decision to use the mark DIACOM for the products under the trademark in Serial No. 5011919

10. Identify all documents in the possession, custody or control of Registrant including but not limited to search reports, market surveys, interoffice memoranda, etc., referring or relating to the adoption of the term DIACOM as a mark for each product and/or service of trademark No. 5011919

11. Identify and describe the channels of trade in the United States of each product and/or service of trademark No. 5011919 marketed under the designation DIACOM.

12. Has Registrant requested or received or does Registrant have knowledge of any opinions, legal or otherwise, of any type regarding the right to use the mark DIACOM? If the answer to this interrogatory is other than a categorical unqualified negative, identify the person or persons requesting each such opinion; identify each such opinion; and identify the person rendering each such opinion.

13. Identify the Registrant's predecessors-in-interest, and all of its subsidiaries and affiliated companies, and the officers, directors, employees, agents and representatives thereof.

14. Identify any and all documents responsive to the foregoing interrogatories which are lost or unavailable and identify the date(s) the loss or unavailability was first discovered, the person(s) who first discovered the loss or unavailability and the person(s) most knowledgeable about the contents of such lost or unavailable documents.

15. Identify all persons who participated in any way in the preparation of the answers or responses to these interrogatories and state specifically, with reference to interrogatory numbers, the area of participation of each such person (excluding only Registrant's lawyers or their representatives).

16. Identify the person within Registrant who has the greatest knowledge as to the information requested, as to each of the above interrogatories.

17. Identify any study, research, focus group, testing or similar validation procedure employed by Registrant or any person or entity at Registrant's request or on behalf of Registrant to determine the presence and/or absence of any confusion between Petitioner's product and/or services under the designation DIACOM and the products and/or services of trademark Serial No. 5011919.

18. State when and under what circumstances Ulysses Angulo got acquainted with Khachatur Mkrtchyan.

19. State whether Registrant Ulysses Angulo concluded distribution contract "Contract number 14361" between Registrant and Petitioner.

20. State whether Registrant had the right to represent Petitioner's product in the market of the USA, Canada, Mexico, the South Korea due to "Contract number 14361".

21. State whether Registrant got the right to distribute DIACOM products produced by Khachatur Mkrtchyan according to "Contract number 14361" between Registrant and Petitioner.

22. State whether Registrant was obliged not to sale similar products of other manufacturers according to "Contract number 14361" between Registrant and Petitioner.

23. Was Registrant Petitioner's distributor according to "Contract number 14361" between Registrant and Petitioner?

24. State why Registrant concluded "Contract number 14361" between Registrant and Petitioner.

25. State why Registrant concluded the "Contract number 14361" between Registrant and Petitioner in 2014 according to which Registrant got the rights to promote DIACOM products only since 2014, if Registrant has been using DIACOM mark since 2005.

26. Identify all documents, purchase orders, invoices, labels, flyers, brochures, other advertising or any writing whatsoever which confirm Registrant actual use of the DIACOM designation before conclusion of "Contract number 14361".

27. State whether Registrant violated "Contract number 14361" conditions. If the answer to this interrogatory is other than a categorical unqualified negative, identify what kinds of violation occurred.

28. State whether Registrant sent apologize e-mails to Diacom Exclusive Distributors. If the answer to this interrogatory is other than a categorical unqualified negative, identify what violation caused Registrant send that e-mail.

29. Identify the author of the e-mail from orders@biostarorganix.com to Khachatur Mkrtchyan e-mail address (Screenshot of this e-mail message is Exhibit 10 on the Petition for Cancellation).

30. State whether Registrant sent e-mail from orders@biostarorganix.com to Khachatur Mkrtchyan e-mail address in 2014 saying that he purchased the Diacom product in late 2011/2012 and would learn the device.

31. State why Registrant purchased DIACOM devices from Khachatur Mkrtchyan in late 2011/2012 to learn the device if it produces and sells DIACOM products itself, and why then it had problems with selling the DIACOM device in the USA.

32. State whether Registrant published any information about discontinued DIACOM devices purchased from Petitioner on its or its affiliates' websites.

33. State whether Registrant or its affiliates mailed third parties that DIACOM products purchased from Petitioner got discontinued.

34. State whether Registrant applied for trademark DIACOM registration № 86486523 in 2014.

35. State why №86486523 TEAS Plus Application Filing Date: 12/19/2014 has Petitioner mentioned as trademark owner, and Registrant itself as domestic representative.

36. State whether Registrant published uglified pictures of DIACOM trademark (DIACOM-DIASCAM, exhibit1-2 in Petitioner's reply in support of its opposition to Respondent's motion to dismiss / motion for summary judgment) on its or its affiliates' websites.

Date: December 05, 2017

/s/ Khachatur Mkrtchyan

Khachatur Mkrtchyan

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CZECH REPUBLIC

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PROOF OF SERVICE

I, Khachatur Mkrtchyan, hereby certify that a true and complete copy of the PETITIONER'S FIRST SET OF INTERROGATORIES TO REGISTRANT filed December 05, 2017, has been served on Biostar Technology International LLC by forwarding said copy on October 18, 2017, via email to: eric@revisionlegal.com, john@revisionlegal.com, Anderson@revisionlegal.com

Date: December 05, 2017

/s/ Khachatur Mkrtchyan

Khachatur Mkrtchyan

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