

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact No.: 571-272-8500

wbc

Mailed: January 27, 2016

Opposition No. 91223510

*Symplicity Corporation*

*v.*

*Acelero Learning Data and  
Technical Assistance, Inc.*

**Wendy Boldt Cohen, Interlocutory Attorney:**

Pursuant to Fed. R. Civ. P. 26(f) and Trademark Rules 2.120(a)(1) and (2), the parties to this proceeding conducted a discovery conference on January 26, 2016.<sup>1</sup> Participating in the conference were Opposer's attorney, Lora Moffatt, Applicant's attorneys, Javier Ramos and Robert Koch, and Board interlocutory attorney, Wendy Boldt Cohen.

The Board reminds the parties of the automatic imposition of the Board's standard protective order in this case. The standard form protective order is online at <http://www.uspto.gov>. The Board reminds the parties that they may negotiate an amended protective agreement, subject to Board approval.

The Board further reminds the parties that neither the exchange of discovery requests nor the filing of a motion for summary judgment (except on the basis

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<sup>1</sup> Applicant requested Board participation on January 19, 2016.

of *res judicata* or lack of Board jurisdiction) can occur until the parties make their initial disclosures as required by Fed. R. Civ. P. 26(f).

The parties have indicated that they have engaged in settlement discussions but have not reached an agreement. The parties have indicated that there is no other pending litigation, in federal court or before the Board, between the parties. The parties are reminded that the Board encourages settlement. To that end, the Board is generous with periods of extension or suspension to facilitate settlement discussions, although the Board does not get involved in the substantive settlement negotiations.

The Board discussed accelerated case resolution (ACR) and urged the parties to discuss it further at a later date. In view of the pleadings, the proceeding appears to be well-suited for ACR. The parties have agreed to discuss ACR at a later date.

Parties requesting ACR may stipulate to a variety of matters to accelerate disposition of this proceeding, including: abbreviating the length of the discovery, testimony, and briefing periods as well as the time between them; limiting the number or types of discovery requests or the subject matter thereof; limiting the subject matter for testimony, or limiting the number of witnesses, or streamlining the method of introduction of evidence, for example, by stipulating to facts and introduction of evidence by affidavit or declaration. The parties are directed to review the Board's website regarding ACR and TBMP §§ 528.05(a)(2) and 702.04 (2015). If the parties later agree to pursue ACR, they

should notify the interlocutory attorney assigned to this proceeding by not later than two months from the opening of the discovery period.

The parties agreed to service by e-mail only to the emails noted on the record, with Trademark Rule 2.119(b)(6) being applicable to such service. The parties were reminded that by making this stipulation, the parties may not avail themselves of the additional five days contemplated by Trademark Rule 2.119(c) afforded to parties when service is made by first-class or express mail. *See McDonald's Corp. v. Cambridge Overseas Development Inc.*, 106 USPQ2d 1339, 1340 (TTAB 2013).

The parties are urged to file all submissions through the Board's Electronic System for Trademark Trials and Appeals (ESTTA) database, available online at: <http://estta.uspto.gov>. Throughout this proceeding, the parties should review the Trademark Rules of Practice and the Trademark Board Manual of Procedure ("TBMP"). The Board expects all parties appearing before it to comply with the Trademark Rules of Practice and where applicable, the Federal Rules of Civil Procedure.

### *Pleadings*

The Board has reviewed the pleadings in this case. In the notice of opposition, Opposer has adequately pleaded standing to bring this opposition. *See, e.g., Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982); TBMP § 309.03(b) (2014); *Home Juice Co. v. Runmlin Cos.*, 231 USPQ 897, 899 (TTAB 1986); *see also King Candy Co. v. Eunice King's Kitchen*,

*Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974); *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Opposer alleges at paragraph 5 of the notice of opposition, as part of its pleading of standing, that it has been advised by the Examining Attorney for its application that if Applicant's application matures to registration, Opposer will be refused registration. *See Saddlesprings Inc. v Mad Croc Brands Inc.*, 104 USPQ2d 1948, 1950 (TTAB 2012); *ShutEmDown Sports Inc. v. Lacy*, 102 USPQ2d 1036, 1041 (TTAB 2012); *Kallamni v. Khan*, 101 USPQ2d 1864, 1865 (TTAB 2012). In short, the statements in the prefatory paragraph and paragraphs 1–6 of the notice of opposition allege facts which, if proven,<sup>2</sup> would show a personal interest in the outcome of the proceeding and a reasonable basis for a belief of damages. *See Universal Oil Prod. Co. v. Rexall Drug & Chem. Co.*, 463 F.2d 1122, 1123, 174 USPQ 458, 459 (CCPA 1972).

Opposer adequately set forth a claim of likelihood of confusion alleging common law use that “is prior and superior to any rights of Applicant in the mark”; and that Applicant's mark “so resembles Opposer's INSIGHT Mark, as to be likely, when applied to the services currently listed in the application, to cause confusion, mistake and deception, with consequent irreparable damage to Opposer's business and goodwill.” *See In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973); *King Candy Co. v. Eunice King's*

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<sup>2</sup> Facts which establish standing are a part of a plaintiff's case and must be affirmatively proved at trial. *See Boswell v. Mavety Media Group Ltd.*, 52 USPQ2d 1600, 1605 (TTAB 1999) *citing Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982).

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*Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974); TMEP § 1207.01 *et seq* (2016).

Answer

In its answer Applicant denied the salient allegations in the notice of opposition.

Dates remain as set in the Board's November 18, 2016 order.

The Board thanks the parties for their participation.