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

Proceeding	91223510
Party	Plaintiff Symplicity Corporation
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Date	06/09/2016
Attachments	Symplicity Response to Acelero Motion to Compel.pdf(4211140 bytes)

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

SYMPPLICITY CORPORATION,

Opposer,

v.

ACELERO LEARNING DATA AND TECHNICAL
ASSISTANCE, INC.,

Applicant.

Opposition No. 91223510

U.S. Application No. 86/257,568

Mark: SHINE INSIGHT

SYMPPLICITY'S RESPONSE TO ACELERO'S MOTION TO COMPEL

Acelero has moved the Board for an order compelling Symplicity “to fully comply with its discovery obligations in this opposition.” Acelero’s motion should be denied in all respects because Symplicity has complied and continues to comply with its discovery obligations as discovery in this opposition proceeds. To date, Symplicity has produced nearly 1,300 pages of documents responsive to Acelero’s document requests and has served twice-amended interrogatory responses. And regarding Acelero’s request that the Board test the sufficiency of Symplicity’s responses to Acelero’s requests for admission, that request is plainly the result of nothing more than Acelero’s dissatisfaction with Symplicity’s responses—which follow Acelero’s explicit instructions set forth in its Requests for Admission. Symplicity’s responses suffer from no actual deficiency. Accordingly, Acelero’s motion to compel should be denied in its entirety.

RELEVANT FACTUAL BACKGROUND

On February 4, 2016, Acelero served Symplicity with Acelero's First Set of Requests for the Production of Documents and Things (No. 1-38), First Set of Interrogatories (No. 1-16), and First Set of Requests for Admission (No. 1-46). [Exhs. 1, 2, and 3, respectively]. By agreement of the parties, Symplicity served its objections and responses to Acelero's first set of discovery requests on March 28, 2016. [Exhs. 4, 5, and 6]. Three days later, Symplicity served amended interrogatory responses, with a signed verification. [Exh. 7]. On April 14, 2016, Acelero provided a letter to Symplicity alleging certain deficiencies in Symplicity's discovery responses. [Exh. 8]. Thereafter, beginning on May 2, 2016, and continuing through June 8, 2016, Symplicity has produced nearly 1,300 pages of documents responsive to Acelero's discovery requests. [Exh. 9]. Despite Symplicity's response to Acelero's letter of April 14, 2016 [Exh. 10], Acelero nevertheless chose to file its motion to compel. Consistent with its discovery obligations, Symplicity continues to provide and supplement its responses to Acelero's discovery requests as fact discovery proceeds in this opposition. [See Exh. 11].

ARGUMENT

A. Symplicity Has Supplemented Its Interrogatory Responses, Rendering Acelero's Motion to Compel Moot

Consistent with its obligations under Federal Rule of Civil Procedure 26(e), Symplicity has served Acelero with supplemented interrogatory responses. [Exh. 11]. These supplemented interrogatory responses reflect the information presently known to Symplicity and, to the extent appropriate, may be further supplemented or amended as Symplicity's investigation in

connection with this opposition continues. Symplicity's supplemented interrogatory responses address the "deficiencies" alleged by Acelero in its motion, rendering Acelero's request for Symplicity to "fully respond" moot.

With regard to Interrogatory No. 1, Symplicity has supplemented its response to identify specific products and services and to identify documents produced by Symplicity that relate to its response. **[Exh. 11 at 5-6].**

With regard to Interrogatory No. 2, Symplicity has likewise supplemented its response to provide additional information concerning the "channels of distribution" for Symplicity's products and services, as well as identifying specific documents and other information that relate to its response. **[Exh. 11 at 6-7].**

Symplicity's response to Interrogatory No. 4 has also been supplemented. Specifically, Symplicity's response identifies particular documents produced to Acelero that provide information responsive to the interrogatory. **[Exh. 11 at 7-8].** Symplicity's supplemented response complies with both the Federal Rules and the TBMP. *See* Fed. R. Civ. P. 33(d); TBMP § 405.04(b) ("the responding party may answer the interrogatory by specifying the records from which the information may be derived or ascertained, ... If the responding party elects to answer an interrogatory by specifying and producing business records, the specification must be in sufficient detail to permit the propounding party to locate and identify, as readily as can the responding party, the records from which the answer may be ascertained."). Accordingly, Acelero's complaints about Symplicity's alleged "failure" to properly invoke Rule 33(d) of the Federal Rules of Civil Procedure should be rejected.

With regard to Interrogatory No. 5, Symplicity has supplemented its response to provide additional information concerning “the media or medium used to communicate INSIGHT to the public...”, as well as identifying specific documents that relate to its response. **[Exh. 11 at 8-9]**.

Symplicity’s response to Interrogatory No. 7 has been supplemented to provide more specific information responsive to this interrogatory, including an identification of documents produced to Acelero that relate to the response. **[Exh. 11 at 10]**. Acelero’s complaints about Symplicity’s alleged “failure” to properly invoke Rule 33(d) of the Federal Rules of Civil Procedure should again be rejected.

As with Interrogatory Nos. 4 and 7 (addressed above), Acelero complains that Symplicity has not properly invoked Rule 33(d) in response to Interrogatory Nos. 12 and 15. With regard to Interrogatory No. 12, Symplicity has provided a specific response: “Symplicity is not aware of any communications relating to SHINE INSIGHT outside of this proceeding” **[Exh. 11 at 21]**. To the extent Symplicity becomes aware of any such communications as part of its investigation in connection with this opposition, Symplicity will supplement its response accordingly and produce any such non-privileged communications to the extent they exist. Indeed, Symplicity indicated as much in its interrogatory response. **[Exh. 11 at 21]**. Symplicity has not “promised” to produce documents in lieu of providing a response to this interrogatory. Thus, Acelero’s contention that Symplicity’s response to Interrogatory No. 12 is deficient is wrong.

With regard to Interrogatory No. 15, Symplicity has supplemented its response to identify particular documents produced to Acelero that provide information responsive to the interrogatory as permitted by Fed. R. Civ. P. 33(d) and TBMP § 405.04(b). **[Exh. 11 at 24]**. Yet

again, Acelero's complaints about Symplicity's alleged "failure" to properly invoke Rule 33(d) of the Federal Rules of Civil Procedure should be rejected.

As set forth above, Symplicity has provided substantive interrogatory responses that comply with its discovery obligations. There is nothing for the Board to compel.

B. Symplicity Has Not Forfeited Its Right to Object to Acelero's First Set of Interrogatories

On March 28, 2016, Symplicity timely provided substantive responses to Acelero's First Set of Interrogatories. [Exh. 5]. Just three days later, on March 31, 2016, Symplicity served a certification of those substantive responses (amended only to the extent that a Symplicity employee's title was corrected) on Acelero. [Exh. 7]. Despite Acelero's admission that "[Symplicity] served its original response to the Interrogatories on March 28, 2016," [Motion at 11], Acelero nevertheless suggests that Symplicity somehow failed to timely respond at all because of the mere fact that a certification statement was served just three days later. Acelero's argument elevates form over substance to the extreme.

The Board does have discretion on this issue, but exercising that discretion to conclude that Symplicity has forfeited entirely its objections to Acelero's interrogatories would be a drastic and unjustified result. Acelero's argument relies on a hypertechnical interpretation of the rules, but fails to explain how Acelero has been prejudiced in anyway. Notably, the principle case relied on by Acelero is easily distinguishable because it involves circumstances in which no interrogatory responses were served at all. *See Environtech Corp. v. Compagnie Des Lampes*, 1979 WL 25375, at *2 (TTAB Sept. 18, 1979) ("Where, as here, there has been a complete failure to respond"). In stark contrast, Symplicity timely served initial substantive responses on March 28, 2016, and then served an amended set of responses only three days later. When

substantive responses have been served in a timely manner, as Symplicity did here, the Board has declined to find any forfeiture of objections, even when a party's signature is provided at a later date. *See Yves Saint Laurent Fashion, B.V. v. Y&S Handbags*, Opposition No. 119265, 2002 WL 1359367, at *3 (TTAB June 20, 2002) (denying motion to compel but ordering responding party to provide signed interrogatory responses within 20 days, without any forfeiture of objections). The Board should do the same here.

C. Symplicity's Responses to Acelero's Document Requests Are Both Proper and Consistent with Acelero's Own Responses to Symplicity's Document Requests

Acelero's complaints regarding alleged deficiencies in Symplicity's objections and responses to Acelero's First Set of Requests for Production of Document Things (No. 1-38) were addressed in Symplicity's letter of May 19, 2016. [Exh. 10]. In particular, Acelero was advised that responsive, non-privileged documents that exist and are located after a reasonable search have been and are being produced. Unless privileged, Symplicity has no intention to withhold responsive documents and, to the extent responsive privileged documents are located, a privilege log will be provided to Acelero. Consistent with Symplicity's responses to Acelero's document requests, and the representations in its letter of May 19, 2016, Symplicity has produced nearly 1,300 pages of responsive documents. [Exh. 9]. The basis for Acelero's motion to compel in this regard remains unclear, and should be denied.

It is notable that even though Acelero complains about Symplicity's responses, Acelero's own objections and responses to Symplicity's First Set of Requests for Production of Documents and Things are similar in key respects. [See Exh. 12]. First, Acelero sets forth nineteen (19) general objections and qualifications, and proceeds to respond to each and every one of Symplicity's requests subject to those general objections and qualifications. [Exh. 12]. Second,

Acelero finds fault with Symplicity's response that "[s]ubject to and without waiving the foregoing General Objections [and in some responses, specific objections], relevant, nonprivileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced." [Motion at 13-14]. However, it is not clear how Symplicity's responses are any less legitimate than Acelero's substantially similar responses, which state: "Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant's possession, custody, or control, and can be located after a reasonable search therefor." [Exh. 12 at 5-31]. Acelero's own responses to Symplicity's document requests undermine its complaints about Symplicity's responses, and suggest that Acelero's efforts to seek Board intervention are unnecessary. Acelero's motion should be denied for this additional reason.

D. Symplicity's Responses and Objections to Request for Admission Nos. 6-9 and 34-41 Are Not Deficient

Symplicity's responses and objections to Acelero's Request for Admission Nos. 6-9 and 34-41 are entirely sufficient. Acelero's contention otherwise is incorrect, and appears to be based simply on its dissatisfaction with Symplicity's legitimate responses.

With regard to Request Nos. 6-9, Acelero chose to inquire about "early education and child development curriculum and assessment." [Exh. 3 at 5]. Nowhere in its Requests for Admission, however, did Acelero provide any definition or guidance as to the precise meaning or scope of that phrase. The phrase is facially vague and ambiguous because there is no demarcation as to how young or how old students are who are involved in "early education and child development," at what age "early education" stops, or what grades are considered to be part

of or beyond “early education.” As a result, Symplicity lodged an appropriate objection and, in accordance with Acelero’s explicit instructions set forth in its requests [Exh. 3 at 4], specified its reasonable interpretation of the phrase and responded accordingly. [Exh. 6 at 4-5]. Acelero is attempting to conjure up a deficiency where none exists, presumably because it does not like the responses Symplicity has provided.

Acelero’s reliance on Symplicity’s Notice of Opposition does not help its argument. Indeed, the language in Symplicity’s Notice of Opposition is drawn from the goods and services statement of the SHINE INSIGHT application. [Exh. 13 at 1; Exh. 14]. But the harm identified by Symplicity should SHINE INSIGHT become a registered mark is directly attributable to the Trademark Examining Attorney’s provisional refusal to register Symplicity’s INSIGHT mark based on likelihood of confusion with Acelero’s mark. [Exh. 15 at 3-4]. That does not suggest any particular interpretation—much less rise to an evidentiary admission—of the scope and meaning of the phrase “early education and child development curriculum and assessment” arbitrarily chosen by Acelero. As Acelero notes in its brief, Symplicity made this distinction clear in its letter of May 19, 2016 [Exh. 10], but Acelero chose to ignore that response and file its motion regardless.

Acelero also takes issue with Symplicity’s objections and responses to Request for Admission Nos. 34-41, which seek admissions as to whether or not Symplicity has received a legal opinion regarding particular trademark issues. [Exh. 3 at 8]. To the extent Acelero may be seeking privileged information, the requests are objectionable and Symplicity lodged such an appropriate objection. [Exh. 6 at 11-13]. Otherwise, as is clearly set forth in its responses, Symplicity has denied the fact of obtaining legal opinions. Despite being advised as much,

Acelero chose to file its motion anyway. Yet, there is no further or different response to compel, and Acelero's request should be denied.

CONCLUSION

Symplicity has responded in good faith to Acelero's discovery requests and continues to provide responsive information in accordance with its discovery obligations. Acelero's requests in its motion are either moot or without merit. Accordingly, Acelero's motion to compel should be denied in all respects.

Dated: New York, New York
June 9, 2016

Respectfully submitted,

CROWELL & MORING LLP

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of June, 2016, a true and correct copy of the foregoing **SYMPPLICITY'S RESPONSE TO ACELERO'S MOTION TO COMPEL with EXHIBITS 1-15** were caused to be served on counsel for the Applicant by electronic mail to:

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EXHIBIT 1

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

In the Matter of:
Application Serial No. 86/257,568
For the Mark: SHINE INSIGHT
Published in the *Official Gazette (Trademarks)* on April 28, 2015
Opposition filed on August 26, 2015

SYMPPLICITY CORP.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91223510
)	
ACELERO LEARNING DATA AND)	
TECHNICAL ASSISTANCE, INC.,)	
)	
Applicant.)	

**ACELERO’S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS (NO. 1-38)**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. 2.120(d), applicant Acelero Learning Data and Technical Assistance, Inc. (“Acelero”) hereby requests that oppose Symplicity Corp. (“Symplicity”) answer the following interrogatories fully and under oath and serve the responses on undersigned counsel for Acelero within thirty (30) days of the service hereof, or at such other time and place as counsel for the parties may agree in writing.

DEFINITIONS

For the purposes of these requests, the following definitions apply:

1. Unless otherwise specified, all terms shall be interpreted as they are used in the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) and the

Federal Rules of Civil Procedure. The requests and terms used herein shall be construed to require the fullest and most complete disclosure permitted by law.

2. The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in the Federal Rules of Civil Procedure, and includes, without limitation, any book, bill, calendar, chart, check, compilation, computation, computer or network activity log, correspondence, data, data compilation, database, diagram, diary, document, draft, drawing, e-mail, electronic message, file, folder, film, graph, graphic presentation, image, index, inventory, invoice, jotting, journal, ledger, machine readable material, map, memoranda, metadata, minutes, note, order, paper, photograph, printout, recording, report, software, spreadsheet, statement, sound recording, summary, telephone message record or log, transcript, video, voicemail, voucher, work paper, writing, worksheet, or any other item or group of documentary material or information, regardless of physical or electronic format or characteristic, and any information therein, and copies, notes, and recordings thereof. Information that serves to identify, locate or link such material, such as file inventories, file folders, indices and metadata, is also included in this definition. A draft or non-identical copy is a separate item within the meaning of these terms. For the avoidance of doubt, the term “document” should be construed to include “electronically stored information” as such term is used in FED. R. CIV. P. 26(b)(2)(B) and 34(b)(2)(E). **This definition expressly requires you to search for electronic documents or correspondences, including without limitation e-mail correspondence (including all attachments to e-mails).**

3. The terms “communication” and “correspondence” mean any transmission of information by one or more persons and/or between two or more persons by any means, including but not limited to telephone conversations, letters, telegrams, teletypes, telexes, telecopies, e-mail, computer linkups, written memoranda, notes and face-to-face conversations.
4. The term “person” means any natural person or legal entity, including individuals, corporations, businesses, firms, joint ventures, partnerships, limited liability companies, sole proprietorships, governments, agencies or instrumentalities of governments, unincorporated associations, and cooperatives.
5. The term “day” and “date” mean the exact day, month and year if ascertainable or, if not, the best available approximation (including relationship to other events).
6. The terms “relate to,” “relating to,” and “regarding” include, without limitation, constituting, defining, concerning, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to, including items which contradict or are inconsistent with the answer provided.
7. The terms “identify,” “identification,” “identity,” or any variant thereof, shall have the following meaning:
 - a. When used in reference to a document, it shall mean to state the type or common description of the document, the date of the document, the name of the author or originator of the document, the name and address of the custodian of the document, and a brief summary of the document's contents. If any such document was, but presently no longer is, in the respondent’s possession, state what disposition was made of such document, the reason for such disposition, and the last known person in possession of such information.
 - b. When used in reference to a natural person, it shall mean to state the person’s full name, title, employer (if applicable), and last known residential and

business addresses and telephone numbers. When a person previously has been identified fully in response to an interrogatory, it is sufficient thereafter to state merely his or her name.

- c. When used in reference to a partnership, it shall mean to state the full name of the partnership, the names of the general and limited partners, the residential and business addresses and telephone numbers of the general and limited partners, and the address and telephone number of the partnership's principal office.
 - d. When used in reference to a corporation, it shall mean to state its full corporate name, its state of incorporation, and the address and telephone number of its principal place of business.
 - e. When used in reference to an unincorporated association or any other business entity, it shall mean to state the full name of the entity and the address and telephone number of its principal place of business.
 - f. When used in reference to communication, it shall mean to state the date on which the communication was made, the time and place when and where the communication occurred, a summary of the contents of the communication, the identity of each person to whom the communication was made, the identity of each person by whom such communication was made, and the identity of each person who was present when such communication occurred.
 - g. When used in reference to an act, action, incident, event, or accident, it shall mean to state the date and place of its occurrence, the nature and circumstances of its occurrence, and the identity of all persons involved with its occurrence, including the nature of their involvement with the occurrence.
8. "Describe," when used with respect to a communication, a meeting, an act or conduct, means to give, state, or identify the following:
- a. The date of the communication, meeting, act or conduct, where it took place, the identity of each participant and the identity of each person who was present;
 - b. If a communication or meeting, the identity of the person making the particular statement so listed, the mode of communication (for example, in writing, telephone, or in person), and the location of each of the participants; or
 - c. If an act or conduct, the details of the act or conduct being described and what each person participating in such act or conduct did.

9. Where the context makes it appropriate, each singular word shall include its plural and each plural shall include its singular. “Any” as well as “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery all responses which might otherwise be construed to be outside its scope. Each of the following words includes the meaning of every other word: “each,” “every,” “all,” and “any.” The terms “and,” “or” and “and/or” are to be read in both the conjunctive and disjunctive, and a request for information which would be responsive under a conjunctive reading shall serve as a request for all information which would be responsive under a disjunctive reading. The present tense shall be construed to include the past tense, and the past tense shall be construed to include the present tense. The masculine shall be construed in the generic sense. “Including” shall be construed broadly, as “including but not limited to” or “including without limitation.”
10. “Applicant” and “Acelero” refers to applicant Acelero Learning Data and Technical Assistance, Inc., together with its predecessors, successors, parents, subsidiaries, affiliates, related companies, and any person or entity acting for or on their respective behalf, including without limitation their past, present, and future principals, partners, representatives, directors, officers, agents, shareholders, members, managers, employees, and attorneys.
11. “You,” “your”, “Opposer” and “Syplicity” refers to Syplicity Corp., together with its predecessors, successors, parents, subsidiaries, affiliates, related companies, and any person or entity acting for or on their respective behalf, including without limitation their past, present, and future principals, partners,

representatives, directors, officers, agents, shareholders, members, managers, employees, and attorneys.

12. “INSIGHT” refers to the word mark that is pending before the United States Patent and Trademark Office (“USPTO”) as U.S. application no. 86/533,567.
13. “INSIGHT products or services” refers to any goods or services identified in whole or in-part by INSIGHT and marketed, offered for sale, and/or sold in commerce.
14. “SHINE INSIGHT” refers to the word mark that is pending before the USPTO as U.S. application no. 86/257,568.
15. “Opposition” refers to USPTO opposition no. 91223510.
16. “Notice” and “Notice of Opposition” refer to the notice of opposition filed herein on August 26, 2015, as the same may have been and may be amended from time to time.
17. “Answer” refers to the answer filed by Acelero in the Opposition on December 30, 2015.
18. “CONNECT INSIGHT” refers to the word mark registered as U.S. trademark registration no. 4,676,307.
19. “YOUTH INSIGHT” refers to the word mark registered as U.S. trademark registration no. 4,134,520.
20. “Use in commerce” has the meaning given to it in 15 U.S.C. 1127.
21. “Trademark” has the meaning given to it in 15 U.S.C. 1127.

INSTRUCTIONS

1. These requests shall be deemed to include any and all relevant information within your possession, custody or control, including information within the possession, custody or control of and any and all of your past and present agents, representatives, employees, servants, attorneys, and accountants.
2. Pursuant to TBMP 408.03 and FED. R. CIV. P. 26(e), these requests are continuing in nature, and to the extent that at any time after the production of documents and things called for by these requests you learn of and/or acquire additional information responsive to these requests, you must provide such information in a timely manner.
3. If you find the meaning of any term in these requests to be unclear, you should assume a reasonable meaning, state what the assumed meaning is, and answer the requests on the basis of that assumed meaning. Acelero reserves the right to contest such assumed meaning.
4. If, in answering these requests, you object to any part of an request, each part of said request shall be treated separately. If an objection is made to one subpart, the remaining subpart(s) shall be answered. If an objection is made on the basis that the request or subpart thereof calls for information that is beyond the scope of discovery, the request or subpart thereof shall be answered to the extent that it is not objectionable.
5. If the response to any request is that you lack knowledge of the requested information, describe all efforts that you have made to obtain the information necessary to respond.

6. With respect to any information responsive to these requests you withhold or refuse to divulge on a claim of privilege, identify in detail the legal basis for such claim. Acelero reserves the right to contest such a claim of privilege.

DOCUMENT REQUESTS

1. All documents identified in any response to Interrogatories 1-15.
2. All documents relating to any response to Interrogatories 1-15.
3. All documents evidencing Symplicity's use in commerce of INSIGHT.
4. All documents supporting Symplicity's claims that it has used INSIGHT in commerce (*see, e.g.*, Notice at ¶ 4).
5. All documents relating to Symplicity's claims that it has used INSIGHT in commerce (*see, e.g.*, Notice at ¶ 4).
6. All documents evidencing sales of INSIGHT products or services.
7. All invoices evidencing sales of INSIGHT products or services prior to April 24, 2014.
8. All documents reflecting the identity of end-users of INSIGHT products or services.
9. All listings of persons who use INSIGHT products or services.
10. All agreements for use of INSIGHT products or services.
11. All drafts agreements containing the word INSIGHT.
12. All documents relating to third-party use in commerce of INSIGHT.
13. All documents evidencing the date of first use in commerce of INSIGHT.

14. All documents supporting Symplicity's alleged date of first use in commerce of INSIGHT.
15. All documents relating to the use in commerce of INSIGHT since December 2010.
16. All documents reflecting the use in commerce of INSIGHT on any website since 2010.
17. All documents evidencing the up-time since 2010 of any website identified in response to Interrogatory 7.
18. All documents reflecting the website traffic of any website identified in response to Interrogatory 7.
19. All documents evidencing the physical location of users since 2010 of any website identified in response to Interrogatory 7.
20. All documents regarding U.S. trademark application no. 86/533,567.
21. All documents relating to any threatened or actual disputes with any third parties regarding INSIGHT.
22. All documents relating to SHINE INSIGHT.
23. All documents relating to any trademarks owned by Acelero.
24. All documents regarding YOUTH INSIGHT.
25. All documents regarding CONNECT INSIGHT.
26. All legal opinions regarding INSIGHT.
27. All legal opinions regarding SHINE INSIGHT.
28. All legal opinions regarding YOUTH INSIGHT.
29. All legal opinions regarding CONNECT INSIGHT.

30. All documents reflecting advertisement of INSIGHT products or services by Symplicity since December 2010.
31. All documents reflecting sales of INSIGHT products or services since December 2010.
32. All documents reflecting analysis of likelihood of confusion between INSIGHT and any other trademarks.
33. All documents reflecting analysis of market penetration of INSIGHT products or services.
34. All documents reflecting analysis of market awareness of INSIGHT.
35. All documents reflecting analysis of market awareness of INSIGHT products or services.
36. All documents reflecting channels of trade for INSIGHT.
37. All documents reflecting channels of trade for INSIGHT products or services.
38. All documents reflecting analysis of common law trademark rights relating to INSIGHT.

Respectfully submitted,

Date: February 4, 2016

By: _____/Javier J. Ramos/

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CERTIFICATE OF SERVICE

I, Javier Ramos, do hereby certify that on February 4, 2016, I caused to be served a true and correct copy of ACELERO'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS (NO. 1-38):

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Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct. Executed on February 4, 2016.

_____/Javier J. Ramos/
Javier J. Ramos

EXHIBIT 2

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

In the Matter of:
Application Serial No. 86/257,568
For the Mark: SHINE INSIGHT
Published in the *Official Gazette (Trademarks)* on April 28, 2015
Opposition filed on August 26, 2015

SYMPPLICITY CORP.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91223510
)	
ACELERO LEARNING DATA AND)	
TECHNICAL ASSISTANCE, INC.,)	
)	
Applicant.)	

ACELERO’S FIRST SET OF INTERROGATORIES (NO. 1-16)

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and 37 C.F.R. 2.120(d), applicant Acelero Learning Data and Technical Assistance, Inc. (“Acelero”) hereby requests that oppose Symplicity Corp. (“Symplicity”) answer the following interrogatories fully and under oath and serve the responses on undersigned counsel for Acelero within thirty (30) days of the service hereof, or at such other time and place as counsel for the parties may agree in writing.

DEFINITIONS

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1. Unless otherwise specified, all terms shall be interpreted as they are used in the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) and the

Federal Rules of Civil Procedure. The requests and terms used herein shall be construed to require the fullest and most complete disclosure permitted by law.

2. The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in the Federal Rules of Civil Procedure, and includes, without limitation, any book, bill, calendar, chart, check, compilation, computation, computer or network activity log, correspondence, data, data compilation, database, diagram, diary, document, draft, drawing, e-mail, electronic message, file, folder, film, graph, graphic presentation, image, index, inventory, invoice, jotting, journal, ledger, machine readable material, map, memoranda, metadata, minutes, note, order, paper, photograph, printout, recording, report, software, spreadsheet, statement, sound recording, summary, telephone message record or log, transcript, video, voicemail, voucher, work paper, writing, worksheet, or any other item or group of documentary material or information, regardless of physical or electronic format or characteristic, and any information therein, and copies, notes, and recordings thereof. Information that serves to identify, locate or link such material, such as file inventories, file folders, indices and metadata, is also included in this definition. A draft or non-identical copy is a separate item within the meaning of these terms. For the avoidance of doubt, the term “document” should be construed to include “electronically stored information” as such term is used in FED. R. CIV. P. 26(b)(2)(B) and 34(b)(2)(E). **This definition expressly requires you to search for electronic documents or correspondences, including without limitation e-mail correspondence (including all attachments to e-mails).**

3. The terms “communication” and “correspondence” mean any transmission of information by one or more persons and/or between two or more persons by any means, including but not limited to telephone conversations, letters, telegrams, teletypes, telexes, telecopies, e-mail, computer linkups, written memoranda, notes and face-to-face conversations.
4. The term “person” means any natural person or legal entity, including individuals, corporations, businesses, firms, joint ventures, partnerships, limited liability companies, sole proprietorships, governments, agencies or instrumentalities of governments, unincorporated associations, and cooperatives.
5. The term “day” and “date” mean the exact day, month and year if ascertainable or, if not, the best available approximation (including relationship to other events).
6. The terms “relate to,” “relating to,” and “regarding” include, without limitation, constituting, defining, concerning, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to, including items which contradict or are inconsistent with the answer provided.
7. The terms “identify,” “identification,” “identity,” or any variant thereof, shall have the following meaning:
 - a. When used in reference to a document, it shall mean to state the type or common description of the document, the date of the document, the name of the author or originator of the document, the name and address of the custodian of the document, and a brief summary of the document's contents. If any such document was, but presently no longer is, in the respondent’s possession, state what disposition was made of such document, the reason for such disposition, and the last known person in possession of such information.
 - b. When used in reference to a natural person, it shall mean to state the person’s full name, title, employer (if applicable), and last known residential and

business addresses and telephone numbers. When a person previously has been identified fully in response to an interrogatory, it is sufficient thereafter to state merely his or her name.

- c. When used in reference to a partnership, it shall mean to state the full name of the partnership, the names of the general and limited partners, the residential and business addresses and telephone numbers of the general and limited partners, and the address and telephone number of the partnership's principal office.
 - d. When used in reference to a corporation, it shall mean to state its full corporate name, its state of incorporation, and the address and telephone number of its principal place of business.
 - e. When used in reference to an unincorporated association or any other business entity, it shall mean to state the full name of the entity and the address and telephone number of its principal place of business.
 - f. When used in reference to communication, it shall mean to state the date on which the communication was made, the time and place when and where the communication occurred, a summary of the contents of the communication, the identity of each person to whom the communication was made, the identity of each person by whom such communication was made, and the identity of each person who was present when such communication occurred.
 - g. When used in reference to an act, action, incident, event, or accident, it shall mean to state the date and place of its occurrence, the nature and circumstances of its occurrence, and the identity of all persons involved with its occurrence, including the nature of their involvement with the occurrence.
8. "Describe," when used with respect to a communication, a meeting, an act or conduct, means to give, state, or identify the following:
- a. The date of the communication, meeting, act or conduct, where it took place, the identity of each participant and the identity of each person who was present;
 - b. If a communication or meeting, the identity of the person making the particular statement so listed, the mode of communication (for example, in writing, telephone, or in person), and the location of each of the participants; or
 - c. If an act or conduct, the details of the act or conduct being described and what each person participating in such act or conduct did.

9. Where the context makes it appropriate, each singular word shall include its plural and each plural shall include its singular. “Any” as well as “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery all responses which might otherwise be construed to be outside its scope. Each of the following words includes the meaning of every other word: “each,” “every,” “all,” and “any.” The terms “and,” “or” and “and/or” are to be read in both the conjunctive and disjunctive, and a request for information which would be responsive under a conjunctive reading shall serve as a request for all information which would be responsive under a disjunctive reading. The present tense shall be construed to include the past tense, and the past tense shall be construed to include the present tense. The masculine shall be construed in the generic sense. “Including” shall be construed broadly, as “including but not limited to” or “including without limitation.”
10. “Applicant” and “Acelero” refers to applicant Acelero Learning Data and Technical Assistance, Inc., together with its predecessors, successors, parents, subsidiaries, affiliates, related companies, and any person or entity acting for or on their respective behalf, including without limitation their past, present, and future principals, partners, representatives, directors, officers, agents, shareholders, members, managers, employees, and attorneys.
11. “You,” “your”, “Opposer” and “Syplicity” refers to Syplicity Corp., together with its predecessors, successors, parents, subsidiaries, affiliates, related companies, and any person or entity acting for or on their respective behalf, including without limitation their past, present, and future principals, partners,

representatives, directors, officers, agents, shareholders, members, managers, employees, and attorneys.

12. “INSIGHT” refers to the word mark that is pending before the United States Patent and Trademark Office (“USPTO”) as U.S. application no. 86/533,567.
13. “SHINE INSIGHT” refers to the word mark that is pending before the USPTO as U.S. application no. 86/257,568.
14. “Opposition” refers to USPTO opposition no. 91223510.
15. “Notice” and “Notice of Opposition” refer to the notice of opposition filed herein on August 26, 2015, as the same may have been and may be amended from time to time.
16. “Answer” refers to the answer filed by Acelero in the Opposition on December 30, 2015.
17. “Educational Institutions” has the same meaning as in paragraph 2 of the Notice.
18. “CONNECT INSIGHT” refers to the word mark registered as U.S. trademark registration no. 4,676,307.
19. “YOUTH INSIGHT” refers to the word mark registered as U.S. trademark registration no. 4,134,520.
20. “Use in commerce” has the meaning given to it in 15 U.S.C. 1127.
21. “Trademark” has the meaning given to it in 15 U.S.C. 1127.

INSTRUCTIONS

1. These interrogatories shall be deemed to include any and all relevant information within your possession, custody or control, including information within the

possession, custody or control of and any and all of your past and present agents, representatives, employees, servants, attorneys, and accountants.

2. Pursuant to TBMP 408.03 and FED. R. CIV. P. 26(e), these requests are continuing in nature, and to the extent that at any time after the production of answers called for by these interrogatories you learn of and/or acquire additional information responsive to these interrogatories, you must provide such information in a timely manner.
3. If you find the meaning of any term in these interrogatories to be unclear, you should assume a reasonable meaning, state what the assumed meaning is, and answer the interrogatories on the basis of that assumed meaning. Acelero reserves the right to contest such assumed meaning.
4. If, in answering these interrogatories, you object to any part of an interrogatory, each part of said interrogatory shall be treated separately. If an objection is made to one subpart, the remaining subpart(s) shall be answered. If an objection is made on the basis that the request or subpart thereof calls for information that is beyond the scope of discovery, the request or subpart thereof shall be answered to the extent that it is not objectionable.
5. Where identification of each fact relied upon by you with regard to a specified allegation or contention is requested, the response shall state separately with specificity each fact in your knowledge, whether obtained through documents, oral communications (whether or not reduced to writing), personal or professional experience or through any other means, which you believe supports the truth of such allegation.

6. If the response to any interrogatory is that you lack knowledge of the requested information, describe all efforts that you have made to obtain the information necessary to respond.
7. With respect to any information responsive to these interrogatories you withhold or refuse to divulge on a claim of privilege, identify in detail the legal basis for such claim. Acelero reserves the right to contest such a claim of privilege.

INTERROGATORIES

1. Identify by name and date of first use in commerce, each product or service which INSIGHT is used, has been used, is intended to be used, or is associated with. Identify by control number all documents responsive to this interrogatory.
2. For each product or service identified in response to Interrogatory No. 1, describe the channels of distribution and/or intended channels of distribution. Identify by control number all documents responsive to this interrogatory.
3. For each product or service identified in response to Interrogatory No. 1, describe the geographic scope of all former, current, and contemplated use in commerce. Identify by control number all documents responsive to this interrogatory.
4. For each product or service identified in response to Interrogatory No. 1, identify by name and address all Educational Institutions using each product or service, the date of first use of each product or service by the institution, and the current status of the use of each product or service by the institution. Identify by control number all documents responsive to this interrogatory.
5. For each product or service identified in response to Interrogatory No. 1, identify the media or medium used to communicate INSIGHT to the public in relation to each product or service. Identify by control number all documents responsive to this interrogatory.
6. For each product or service identified in response to Interrogatory No. 1, describe all analyses performed of market penetration and market awareness of the same. Identify by control number all documents responsive to this interrogatory.
7. For each product or service identified in response to Interrogatory No. 1, identify all websites (by hyperlink) advertising or marketing each product or service, the date the website was first accessible to the public, the duration of accessibility by the public of the website, and the geographic scope of the website's user base. Identify by control number all documents responsive to this interrogatory.

8. Identify by name, title, role, and address any individual who may have knowledge of creation of INSIGHT. Identify by control number all documents responsive to this interrogatory.
9. Identify by name, title, role, and address any individual who may have knowledge of the use in commerce of INSIGHT. Identify by control number all documents responsive to this interrogatory.
10. Identify by name, title, role, and address any individual who may have knowledge of any license or use agreements entered into by Symplicity relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.
11. Identify by name, title, role, and address any individual who may have knowledge of any common law trademark rights relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.
12. Identify, by date, parties involved, and description, all oral or written communications relating to SHINE INSIGHT. Identify by control number all documents responsive to this interrogatory.
13. Identify, by date, parties involved, and description, all oral or written communications relating to CONNECT INSIGHT. Identify by control number all documents responsive to this interrogatory.
14. Identify, by date, parties involved, and description, all oral or written communications relating to YOUTH INSIGHT. Identify by control number all documents responsive to this interrogatory.
15. Identify, by date, parties involved, and description, all oral or written communications relating to any threatened or actual disputes relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.
16. Explain the difference between educational institutions, colleges, and universities as enumerated in paragraph 2 of the Notice.

Respectfully submitted,

Date: February 4, 2016

By: _____/Javier J. Ramos/

Robert J. Koch
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CERTIFICATE OF SERVICE

I, Javier Ramos, do hereby certify that on February 4, 2016, I caused to be served a true and correct copy of ACELERO'S FIRST SET OF INTERROGATORIES (NO. 1-16):

By E-Mail:

Lora A. Moffat, Esq.
Sean E. Jackson, Esq.
Crowell & Moring LLP
590 Madison Avenue
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New York, NY 10022-2544
lmoffatt@crowell.com
sjackson@crowell.com
Attorneys for Opposer

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct. Executed on February 4, 2016.

/Javier J. Ramos/
Javier J. Ramos

EXHIBIT 3

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

In the Matter of:
Application Serial No. 86/257,568
For the Mark: SHINE INSIGHT
Published in the *Official Gazette (Trademarks)* on April 28, 2015
Opposition filed on August 26, 2015

SYMPPLICITY CORP.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91223510
)	
ACELERO LEARNING DATA AND)	
TECHNICAL ASSISTANCE, INC.,)	
)	
Applicant.)	

ACELERO’S FIRST SET OF REQUESTS FOR ADMISSION (NO. 1-46)

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and 37 C.F.R. 2.120, applicant Acelero Learning Data and Technical Assistance, Inc. (“Acelero”) hereby requests that opposer Symplicity Corp. (“Symplicity”) answer the following requests for admission fully and under oath and serve the responses on undersigned counsel for Acelero within thirty (30) days of the service hereof, or at such other time and place as counsel for the parties may agree in writing.

DEFINITIONS

For the purposes of these requests, the following definitions apply:

1. Unless otherwise specified, all terms shall be interpreted as they are used in the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) and the

Federal Rules of Civil Procedure. The requests and terms used herein shall be construed to require the fullest and most complete disclosure permitted by law.

2. The term “person” means any natural person or legal entity, including individuals, corporations, businesses, firms, joint ventures, partnerships, limited liability companies, sole proprietorships, governments, agencies or instrumentalities of governments, unincorporated associations, and cooperatives.
3. The term “day” and “date” mean the exact day, month and year if ascertainable or, if not, the best available approximation (including relationship to other events).
4. The terms “relate to,” “relating to,” and “regarding” include, without limitation, constituting, defining, concerning, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to, including items which contradict or are inconsistent with the answer provided.
5. Where the context makes it appropriate, each singular word shall include its plural and each plural shall include its singular. “Any” as well as “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery all responses which might otherwise be construed to be outside its scope. Each of the following words includes the meaning of every other word: “each,” “every,” “all,” and “any.” The terms “and,” “or” and “and/or” are to be read in both the conjunctive and disjunctive, and a request for information which would be responsive under a conjunctive reading shall serve as a request for all information which would be responsive under a disjunctive reading. The present tense shall be construed to include the past tense, and the

past tense shall be construed to include the present tense. The masculine shall be construed in the generic sense. “Including” shall be construed broadly, as “including but not limited to” or “including without limitation.”

6. “Applicant” and “Acelero” refers to applicant Acelero Learning Data and Technical Assistance, Inc., together with its predecessors, successors, parents, subsidiaries, affiliates, related companies, and any person or entity acting for or on their respective behalf, including without limitation their past, present, and future principals, partners, representatives, directors, officers, agents, shareholders, members, managers, employees, and attorneys.
7. “You,” “your”, “Opposer” and “Syplicity” refers to Syplicity Corp., together with its predecessors, successors, parents, subsidiaries, affiliates, related companies, and any person or entity acting for or on their respective behalf, including without limitation their past, present, and future principals, partners, representatives, directors, officers, agents, shareholders, members, managers, employees, and attorneys.
8. “INSIGHT” refers to the word mark that is pending before the United States Patent and Trademark Office (“USPTO”) as U.S. application no. 86/533,567.
9. “SHINE INSIGHT” refers to the word mark that is pending before the USPTO as U.S. application no. 86/257,568.
10. “Opposition” refers to USPTO opposition no. 91223510.
11. “Notice” and “Notice of Opposition” refer to the notice of opposition filed herein on August 26, 2015, as the same may have been and may be amended from time to time.

12. “Answer” refers to the answer filed by Acelero in the Opposition on December 30, 2015.
13. “CONNECT INSIGHT” refers to the word mark registered as U.S. trademark registration no. 4,676,307.
14. “YOUTH INSIGHT” refers to the word mark registered as U.S. trademark registration no. 4,134,520.
15. “Use in commerce” has the meaning given to it in 15 U.S.C. 1127.
16. “Trademark” has the meaning given to it in 15 U.S.C. 1127.

INSTRUCTIONS

1. These requests shall be deemed to include any and all relevant information within your possession, custody or control, including information within the possession, custody or control of and any and all of your past and present agents, representatives, employees, servants, attorneys, and accountants.
2. If you find the meaning of any term in these requests for admission to be unclear, you should assume a reasonable meaning, state what the assumed meaning is, and answer the requests on the basis of that assumed meaning. Acelero reserves the right to contest such assumed meaning.
3. If, in answering these requests for admission, you object to any part of a request, each part of said request shall be treated separately. If an objection is made to one subpart, the remaining subpart(s) shall be answered.

4. If the response to any request for admission is that you lack knowledge to answer the request, describe all efforts that you have made to obtain the information necessary to respond.
5. With respect to any information responsive to these requests for admission you withhold or refuse to divulge on a claim of privilege, identify in detail the legal basis for such claim. Acelero reserves the right to contest such a claim of privilege.

REQUESTS FOR ADMISSION

1. Admit that Symplicity did not use INSIGHT in commerce before December 2010.
2. Admit that Symplicity used INSIGHT in commerce after December 2010.
3. Admit that Symplicity did not use INSIGHT in commerce before April 24, 2014.
4. Admit that Symplicity did not continually use INSIGHT in commerce between December 2010 and April 24, 2014.
5. Admit that Symplicity ceased using INSIGHT in commerce for any period of time between December 2010 and April 24, 2014.
6. Admit that INSIGHT is not used in commerce for early education and child development curriculum and assessment computer software for administrators.
7. Admit that INSIGHT has not been used in commerce since December 2010 for early education and child development curriculum and assessment computer software for administrators.
8. Admit that INSIGHT is used in commerce for early education and child development curriculum and assessment computer software for administrators.
9. Admit that INSIGHT has been used in commerce since December 2010 for early education and child development curriculum and assessment computer software for administrators.
10. Admit that INSIGHT is not used in commerce for student information archiving and analysis computer software for administrators.
11. Admit that INSIGHT has not been used in commerce since December 2010 for student information archiving and analysis computer software for administrators.
12. Admit that INSIGHT is used in commerce for student information archiving and analysis computer software for administrators.

13. Admit that INSIGHT has been used in commerce since December 2010 for student information archiving and analysis computer software for administrators.
14. Admit that INSIGHT is not used in commerce for early education and child development program compliance monitoring computer software for administrators.
15. Admit that INSIGHT has not been used in commerce since December 2010 for early education and child development program compliance monitoring computer software for administrators.
16. Admit that INSIGHT is used in commerce for early education and child development program compliance monitoring computer software for administrators.
17. Admit that INSIGHT has been used in commerce since December 2010 for early education and child development program compliance monitoring computer software for administrators.
18. Admit that INSIGHT is not used in commerce for software as a service (“SAAS”) services featuring software for use by educational institutions, colleges, and universities for identifying and tracking at-risk students, case management, and creating a directory of tutors, counselors, assigned advisors, mentors, and campus offices.
19. Admit that INSIGHT has not been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for identifying and tracking at-risk students, case management, and creating a directory of tutors, counselors, assigned advisors, mentors, and campus offices.
20. Admit that INSIGHT is used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for identifying and tracking at-risk students, case management, and creating a directory of tutors, counselors, assigned advisors, mentors, and campus offices.
21. Admit that INSIGHT has been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for identifying and tracking at-risk students, case management, and creating a directory of tutors, counselors, assigned advisors, mentors, and campus offices.
22. Admit that INSIGHT is not used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for academic advising center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.
23. Admit that INSIGHT has not been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for academic advising center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.
24. Admit that INSIGHT is used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for academic advising center management,

namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.

25. Admit that INSIGHT has been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for academic advising center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.
26. Admit that INSIGHT is not used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for athletic advising office management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.
27. Admit that INSIGHT has not been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for athletic advising office management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.
28. Admit that INSIGHT is used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for athletic advising office management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.
29. Admit that INSIGHT has been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for athletic advising office management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.
30. Admit that INSIGHT is not used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for counseling center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, creating and maintaining a database of peer mentors, and centralized document management.
31. Admit that INSIGHT has not been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for counseling center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, creating and maintaining a database of peer mentors, and centralized document management.
32. Admit that INSIGHT is used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for counseling center management, namely,

student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, creating and maintaining a database of peer mentors, and centralized document management.

33. Admit that INSIGHT has been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for counseling center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, creating and maintaining a database of peer mentors, and centralized document management.
34. Admit that Symplicity has received a legal opinion regarding common law trademark rights relating to INSIGHT.
35. Admit that Symplicity has not received a legal opinion regarding common law trademark rights relating to INSIGHT.
36. Admit that Symplicity has received a legal opinion regarding likelihood of confusion between INSIGHT and SHINE INSIGHT.
37. Admit that Symplicity has not received a legal opinion regarding likelihood of confusion between INSIGHT and SHINE INSIGHT.
38. Admit that Symplicity has received a legal opinion regarding likelihood of confusion between INSIGHT and YOUTH INSIGHT.
39. Admit that Symplicity has not received a legal opinion regarding likelihood of confusion between INSIGHT and YOUTH INSIGHT.
40. Admit that Symplicity has received a legal opinion regarding likelihood of confusion between INSIGHT and CONNECT INSIGHT.
41. Admit that Symplicity has not received a legal opinion regarding likelihood of confusion between INSIGHT and CONNECT INSIGHT.
42. Admit that Symplicity possessed knowledge of SHINE INSIGHT prior to filing U.S. trademark application no. 86/533,567.
43. Admit that Symplicity possessed knowledge of CONNECT INSIGHT prior to filing U.S. trademark application no. 86/533,567.
44. Admit that Symplicity possessed knowledge of YOUTH INSIGHT prior to filing U.S. trademark application no. 86/533,567.
45. Admit that Symplicity has performed analysis of market penetration of INSIGHT.
46. Admit that Symplicity has performed analysis of market recognition of INSIGHT.

EXHIBIT 4

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

SYMPPLICITY CORPORATION,

Opposer,

v.

ACELERO LEARNING DATA AND
TECHNICAL ASSISTANCE, INC.,

Applicant.

Opposition No. 91223510

U.S. Application No. 86/257,568

Mark: SHINE INSIGHT

**SYMPPLICITY'S RESPONSES TO ACELERO'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS (NO. 1-38)**

Pursuant to Rules 26, 33 and 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice of the United States Patent and Trademark Office ("USPTO"), Opposer Symplicity Corporation ("Symplicity"), by and through its undersigned counsel, hereby responds to Applicant Acelero Learning Data and Technical Assistance, Inc.'s ("Acelero") First Set of Requests for Production of Documents and Things (No. 1-38).

The following responses are based upon information presently available to Symplicity and its attorneys. Symplicity has not completed its investigation of the facts relating to this proceeding and has not completed discovery in this proceeding. The responses given herein are without prejudice to Symplicity's reserved right to supplement or to revise these responses if further investigation or discovery so requires.

GENERAL OBJECTIONS

Unless otherwise stated, these General Objections apply to each and every definition and instruction set forth in the Document Requests, and Symplicity hereby specifically incorporates

all of these General Objections into each specific response, whether or not they are specifically referred to in the response. By setting forth specific objections, Symplicity does not intend to waive, limit, or supersede any of these General Objections. Where a partial response can be made to a request that is otherwise objectionable, such response will be made without waiving any stated objection.

1. Symplicity objects to Acelero's definitions and instructions to the extent they are inconsistent with the Federal Rules of Civil Procedure, including Rule 26, 33 and 34, and the Trademark Rules of Practice. Symplicity will rely upon the Federal Rules of Civil Procedure, the Trademark Rules of Practice and governing case law with respect to the subject definitions and instructions and responses.

2. Symplicity objects to Acelero's document requests to the extent that Acelero seeks documents or things protected by the attorney-client privilege, the attorney work-product doctrine, the common interest privilege, and/or any other applicable privilege or immunity.

3. Symplicity objects to Acelero's document requests to the extent they are not sufficiently limited or reasonably calculated to lead to discovery of admissible evidence or are overly broad, unduly burdensome, and/or premature.

4. Symplicity objects to Acelero's document requests to the extent they seek production of "all documents," "each document" and the like, relating to the subject matter of a particular request as unduly broad and burdensome. In accordance with the Federal Rules of Civil Procedure, Symplicity will make a diligent, good faith search of files identified as most likely to contain documents responsive to Acelero's requests and will produce representative

relevant, non-privileged documents responsive to the requests that are located in connection with such a search that are sufficient to respond to the requests at issue.

5. Symplicity objects to Acelero's document requests to the extent they seek documents that are not in the possession, custody and/or control of Symplicity.

6. Symplicity objects to Acelero's document requests to the extent that Acelero seeks documents or things that are covered by a protective order or court order in another proceeding and/or is designated confidential by a third party.

7. Symplicity objects to Acelero's document requests to the extent they are repetitive, overlapping, or duplicative.

8. Symplicity objects to Acelero's document requests to the extent they seek private, confidential, secret, proprietary and/or commercially-sensitive information of any third-party to whom Symplicity owes a duty of confidentiality.

9. Symplicity objects to Acelero's document requests to the extent they request documents and/or information already in Acelero's possession or which are equally available to the parties from other sources.

10. Symplicity objects to Acelero's document requests to the extent they are directed to activities outside of the United States or foreign commerce with the United States as being beyond the scope of the instant Proceeding.

11. Where a document request includes words and concepts indicative of a legal conclusion by stating that it will produce documents in its possession or identify documents, Symplicity does not represent that such legal conclusions apply.

12. Symplicity objects to Acelero's definition of "You," "your," "Opposer," and "Symplicity" to the extent that the terms may include entities that are not parties to this Opposition or that Symplicity does not control.

13. Discovery in this matter is ongoing. Symplicity's responses to the following document requests, therefore, are necessarily the subject of further and on-going investigation, and are based on the information presently known to Symplicity after a reasonable effort to locate information and documents called for by these document requests. Accordingly, Symplicity's responses are without prejudice to its right to amend or supplement its responses as its investigation and discovery in this matter proceeds. Moreover, Symplicity's objections as set forth herein are made without prejudice to its right to assert any additional or supplemental objections should Symplicity discover additional grounds for such objections.

These General Objections apply to each of Symplicity's responses. To the extent that specific General Objections are cited in a specific response, those specific citations are provided because they are believed to be partially applicable to the specific requests and are not to be construed as a waiver of any other General Objections applicable to information falling within the scope of the request.

Symplicity expressly reserves the right to modify, supplement, and/or amend its responses to these document requests as additional information is made available during discovery in this proceeding.

RESPONSES TO DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1:

All documents identified in any response to Interrogatories 1-15.

RESPONSE TO REQUEST NO. 1

Subject to and without waiving the foregoing General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 2:

All documents relating to any response to Interrogatories 1-15.

RESPONSE TO REQUEST NO. 2:

Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the extent it seeks “[a]ll documents relating to any response” Symplicity also objects to this request to the extent it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 3:

All documents evidencing Symplicity’s use in commerce of INSIGHT.

RESPONSE TO REQUEST NO. 3:

Subject to and without waiver of the foregoing General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 4:

All documents supporting Symplicity's claims that it has used INSIGHT in commerce (*see, e.g.*, Notice at ¶ 4).

RESPONSE TO REQUEST NO. 4

Subject to and without waiver of the foregoing General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 5:

All documents relating to Symplicity's claims that it has used INSIGHT in commerce (*see, e.g.*, Notice at ¶ 4).

RESPONSE TO REQUEST NO. 5

Subject to and without waiver of the foregoing General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 6:

All documents evidencing sales of INSIGHT products or services.

RESPONSE TO REQUEST NO. 6

Symplicity objects to this request to the extent it seeks documents subject to any confidentiality and/or non-disclosure agreements.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 7:

All invoices evidencing sales of INSIGHT products or services prior to April 24, 2014.

RESPONSE TO REQUEST NO. 7

Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the extent it seeks “[a]ll invoices....” Symplicity also objects to this request to the extent it seeks documents subject to any confidentiality and/or non-disclosure agreements.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 8:

All documents reflecting the identity of end-users of INSIGHT products or services.

RESPONSE TO REQUEST NO. 8

Symplicity objects to this request on the grounds that the phrase “identity of end-users” is vague and ambiguous. Symplicity also objects to this request to the extent it seeks documents subject to any confidentiality and/or non-disclosure agreements.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 9:

All listings of persons who use INSIGHT products or services.

RESPONSE TO REQUEST NO. 9

Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the extent it seeks “[a]ll listings of persons” Symplicity also objects to this request to the extent it seeks documents subject to any confidentiality and/or non-disclosure agreements.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 10:

All agreements for use of INSIGHT products or services.

RESPONSE TO REQUEST NO. 10

Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the extent it seeks “[a]ll agreements” Symplicity also objects to this request to the extent it seeks documents subject to any confidentiality and/or non-disclosure agreements.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 11:

All drafts agreements containing the word INSIGHT.

RESPONSE TO REQUEST NO. 11

Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the

extent it seeks “[a]ll drafts agreements” Symplicity also objects to this request to the extent it seeks documents subject to any confidentiality and/or non-disclosure agreements. Symplicity further objects to this request to the extent it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 12:

All documents relating to third-party use in commerce of INSIGHT.

RESPONSE TO REQUEST NO. 12

Symplicity objects to this request to the extent it seeks documents subject to any confidentiality and/or non-disclosure agreements. Symplicity also objects to this request to the extent it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 13:

All documents evidencing the date of first use in commerce of INSIGHT.

RESPONSE TO REQUEST NO. 13

Subject to and without waiver of the foregoing General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 14:

All documents supporting Symplicity's alleged date of first use in commerce of INSIGHT.

RESPONSE TO REQUEST NO. 14

Subject to and without waiver of the foregoing General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 15:

All documents relating to the use in commerce of INSIGHT since December 2010.

RESPONSE TO REQUEST NO. 15

Subject to and without waiver of the foregoing General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 16:

All documents reflecting the use in commerce of INSIGHT on any website since 2010.

RESPONSE TO REQUEST NO. 16

Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the extent it seeks "[a]ll documents reflecting the use ... on any website since 2010."

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 17:

All documents evidencing the up-time since 2010 of any website identified in response to Interrogatory 7.

RESPONSE TO REQUEST NO. 17

Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the extent it seeks “[a]ll documents evidencing the up-time since 2010 of any website” Symplicity also objects to this request because the term “up-time” is vague and ambiguous.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 18:

All documents reflecting the website traffic of any website identified in response to Interrogatory 7.

RESPONSE TO REQUEST NO. 18

Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the extent it seeks “[a]ll documents reflecting the website traffic of any website”

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 19:

All documents evidencing the physical location of users since 2010 of any website identified in response to Interrogatory 7.

RESPONSE TO REQUEST NO. 19

Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the extent it seeks “[a]ll documents evidencing the physical location of users since 2010 of any website”

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 20:

All documents regarding U.S. trademark application no. 86/533,567.

RESPONSE TO REQUEST NO. 20

Symplicity objects to this request to the extent it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 21:

All documents relating to any threatened or actual disputes with any third parties regarding INSIGHT.

RESPONSE TO REQUEST NO. 21

Symplicity objects to this request to the extent it seeks documents subject to any confidentiality and/or non-disclosure agreements. Symplicity also objects to this request to the extent it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 22:

All documents relating to SHINE INSIGHT.

RESPONSE TO REQUEST NO. 22

Symplicity objects to this request to the extent it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 23:

All documents relating to any trademarks owned by Acelero.

RESPONSE TO REQUEST NO. 23

Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the extent it seeks “[a]ll documents relating to any trademarks owned by Acelero.” Symplicity also objects to this request to the extent it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 24:

All documents regarding YOUTH INSIGHT.

RESPONSE TO REQUEST NO. 24

Subject to and without waiver of the foregoing General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 25:

All documents regarding CONNECT INSIGHT.

RESPONSE TO REQUEST NO. 25

Subject to and without waiver of the foregoing General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 26:

All legal opinions regarding INSIGHT.

RESPONSE TO REQUEST NO. 26

Symplicity objects to this request because it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

DOCUMENT REQUEST NO. 27:

All legal opinions regarding SHINE INSIGHT.

RESPONSE TO REQUEST NO. 27

Symplicity objects to this request because it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

DOCUMENT REQUEST NO. 28:

All legal opinions regarding YOUTH INSIGHT.

RESPONSE TO REQUEST NO. 28

Symplicity objects to this request because it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

DOCUMENT REQUEST NO. 29:

All legal opinions regarding CONNECT INSIGHT.

RESPONSE TO REQUEST NO. 29

Symplicity objects to this request because it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

DOCUMENT REQUEST NO. 30:

All documents reflecting advertisement of INSIGHT products or services by Symplicity since December 2010.

RESPONSE TO REQUEST NO. 30

Subject to and without waiver of the foregoing General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 31:

All documents reflecting sales of INSIGHT products or services since December 2010.

RESPONSE TO REQUEST NO. 31

Symplicity objects to this request to the extent it seeks documents subject to any confidentiality and/or non-disclosure agreements.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 32:

All documents reflecting analysis of likelihood of confusion between INSIGHT and any other trademarks.

RESPONSE TO REQUEST NO. 32

Symplicity objects to this request because it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

DOCUMENT REQUEST NO. 33:

All documents reflecting analysis of market penetration of INSIGHT products or services.

RESPONSE TO REQUEST NO. 33

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 34:

All documents reflecting analysis of market awareness of INSIGHT.

RESPONSE TO REQUEST NO. 34

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 35:

All documents reflecting analysis of market awareness of INSIGHT products or services.

RESPONSE TO REQUEST NO. 35

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 36:

All documents reflecting channels of trade for INSIGHT.

RESPONSE TO REQUEST NO. 36

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 37:

All documents reflecting channels of trade for INSIGHT products or services.

RESPONSE TO REQUEST NO. 37

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 38:

All documents reflecting analysis of common law trademark rights relating to INSIGHT.

RESPONSE TO REQUEST NO. 38

Symplicity objects to this request because it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

Dated: New York, New York
March 28, 2016

Respectfully submitted,

CROWELL & MORING LLP

By: /Sean E. Jackson/
Lora A. Moffatt
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*Attorneys for Opposer
Symplicity Corporation*

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March, 2016, a true and correct copy of the foregoing **SYMPPLICITY'S RESPONSES TO ACELERO'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS (NO. 1-38)** was caused to be served on counsel for Applicant by electronic mail to:

Robert J. Koch, Esq.
Javier J. Ramos, Esq.
MILBANK, TWEED, HADLEY & McCLOY, LLP
1850 K Street N.W., Suite 1100
Washington, D.C. 20006
(202) 835-7500
rkoch@milbank.com
jramos@milbank.com

/Sean E. Jackson/
Sean E. Jackson

EXHIBIT 5

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

SYMPPLICITY CORPORATION,

Opposer,

v.

ACELERO LEARNING DATA AND
TECHNICAL ASSISTANCE, INC.,

Applicant.

Opposition No. 91223510

U.S. Application No. 86/257,568

Mark: SHINE INSIGHT

**SYMPPLICITY'S RESPONSES TO ACELERO'S
FIRST SET OF INTERROGATORIES (NO. 1-16)**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and Rule 2.120 of the Trademark Rules of Practice of the United States Patent and Trademark Office ("USPTO"), Opposer Symplicity Corporation ("Symplicity"), by and through its undersigned attorneys, hereby responds to Applicant Acelero Learning Data and Technical Assistance, Inc.'s ("Acelero") First Set of Interrogatories (No. 1-16) ("Interrogatories").

The following responses are based upon information presently available to Symplicity and its attorneys. Symplicity has not completed its investigation of the facts relating to this case and has not completed discovery in this proceeding. The responses given herein are without prejudice to Symplicity's reserved right to supplement or to revise these responses if further investigation or discovery so requires.

GENERAL OBJECTIONS

Unless otherwise stated, these General Objections apply to each and every definition and instruction set forth in the Interrogatories, and Symplicity hereby specifically incorporates all of

these General Objections into each specific response, whether or not they are specifically referred to in the response. By setting forth specific objections, Symplicity does not intend to waive, limit, or supersede any of these general objections. Where a partial response can be made to a request that is otherwise objectionable, such response will be made without waiving any stated objection.

1. Symplicity objects to Acelero's definitions and instructions to the extent they are inconsistent with the appropriate Rules of Civil Procedure, including Rule 26 and 33, and the rules of the Trademark Trial and Appeal Board ("TTAB"). Symplicity will rely upon the Federal Rules of Civil Procedure, the TTAB Rules and governing case law with respect to the subject definitions, instructions and responses.

2. Symplicity objects to the Interrogatories to the extent they are not sufficiently limited or reasonably calculated to lead to discovery of admissible evidence or are overly broad, unduly burdensome, and/or premature.

3. Symplicity objects to the Interrogatories to the extent they contain misstatements of fact or inaccurate assumptions. Nothing in these responses shall be construed as constituting or implying an admission of any allegation or agreement with any assertion or characterization in any interrogatory.

4. Symplicity objects to the Interrogatories to the extent they use language calling for a legal conclusion. Symplicity's responses shall incorporate matters of fact only. None of Symplicity's responses shall be construed as stating or implying a conclusion of law concerning the matters referenced in any interrogatory.

5. Symplicity objects to the Interrogatories to the extent that Acelero seeks information protected by the attorney-client privilege, the attorney work-product doctrine, joint-defense and/or common interest privilege or any other applicable privilege or immunity.

6. Symplicity objects to the Interrogatories to the extent they call for confidential, trade secret or commercially sensitive information to be produced.

7. Symplicity objects to the Interrogatories to the extent they are overbroad, unduly burdensome, premature and/or seek information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

8. Symplicity objects to the Interrogatories to the extent that Acelero seeks information covered by a protective order or court order in another proceeding and/or is designated confidential by a third party.

9. Symplicity objects to the Interrogatories to the extent that Acelero seeks information that is not available to Symplicity after a reasonable search of its files and a reasonable inquiry of its current employees.

10. Symplicity objects to the Interrogatories to the extent Acelero seeks private, confidential, secret, proprietary and/or commercially-sensitive information of any third-party to whom Symplicity owes a duty of confidentiality.

11. Symplicity objects to Acelero's definition of "You," "your," "Opposer," and "Symplicity" to the extent that the terms may include entities that are not parties to this Opposition or that Symplicity does not control.

12. In those instances where the response to an Interrogatory can be derived from the business records, and the burden of deriving or ascertaining the answer is substantially the same for each of the parties, Symplicity will specify the records from which a complete answer may be

ascertained and afford Acelero's counsel a reasonable opportunity to audit, inspect, and copy such records or provide categorized copies of such records in accordance with Federal Rule of Civil Procedure 33(d).

13. Symplicity objects to the Interrogatories to the extent they are repetitive, overlapping, or duplicative.

14. Discovery in this matter is ongoing. Symplicity's responses to the following Interrogatories, therefore, are necessarily the subject of further and on-going investigation, and are based on the information presently known to Symplicity after a reasonable effort to locate information and documents called for by the Interrogatories. Accordingly, Symplicity's responses are without prejudice to its right to amend or supplement its responses as its investigation and discovery in this matter proceeds. Moreover, Symplicity's objections as set forth herein are made without prejudice to its right to assert any additional or supplemental objections should Symplicity discover additional grounds for such objections.

These General Objections apply to each of Symplicity's responses. To the extent that specific General Objections are cited in a specific response, those specific citations are provided because they are believed to be partially applicable to the specific requests and are not to be construed as a waiver of any other General Objections applicable to information falling within the scope of the request.

Symplicity expressly reserves the right to modify, supplement, and/or amend its responses to the Interrogatories as additional information is made available during discovery in this Proceeding.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify by name and date of first use in commerce, each product or service which INSIGHT is used, has been used, is intended to be used, or is associated with. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 1:

Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from U.S. Trademark Application Serial No. 86/533,567 (“the INSIGHT application”), documents relating to which are available at:

http://tsdr.uspto.gov/#caseNumber=86533567&caseType=SERIAL_NO&searchType=statusSearch.

Additional information responsive to this Interrogatory can be derived from:

<https://www.symplicity.com/products/insight.html>.

INTERROGATORY NO. 2:

For each product or service identified in response to Interrogatory No. 1, describe the channels of distribution and/or intended channels of distribution. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 2:

Subject to and without waiver of the foregoing General Objections, Symplicity utilizes salespeople to contact potential purchasers of its products, as well as its website, available at:

<https://www.symplicity.com/products/insight.html>

INTERROGATORY NO. 3:

For each product or service identified in response to Interrogatory No. 1, describe the geographic scope of all former, current, and contemplated use in commerce. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 3:

Subject to and without waiver of the foregoing General Objections, geographic scope is throughout the United States, as well as internationally.

INTERROGATORY NO. 4:

For each product or service identified in response to Interrogatory No. 1, identify by name and address all Educational Institutions using each product or service, the date of first use of each product or service by the institution, and the current status of the use of each product or service by the institution. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 4:

Symplicity objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and/or seeks information that is neither irrelevant nor reasonably calculated to lead to the discovery of admissible evidence. Symplicity also objects to this Interrogatory to the extent it seeks private, confidential, secret, proprietary and/or commercially-sensitive information of any third-party to whom Symplicity owes a duty of confidentiality. Subject to and without waiver of the foregoing Specific and General Objections, Symplicity will produce representative documents sufficient to identify the Educational Institutions using Symplicity's INSIGHT products and services.

INTERROGATORY NO. 5:

For each product or service identified in response to Interrogatory No. 1, identify the media or medium used to communicate INSIGHT to the public in relation to each product or service. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 5:

Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from:

<https://www.symplicity.com/products/insight.html>.

INTERROGATORY NO. 6:

For each product or service identified in response to Interrogatory No. 1, describe all analyses performed of market penetration and market awareness of the same. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 6:

Symplicity objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and/or seeks information that is neither irrelevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing Specific and General Objections, Symplicity is not aware of any analyses “performed of market penetration and market awareness.”

INTERROGATORY NO. 7:

For each product or service identified in response to Interrogatory No. 1, identify all websites (by hyperlink) advertising or marketing each product or service, the date the website was first accessible to the public, the duration of accessibility by the public of the website, and the geographic scope of the website’s user base. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 7:

Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from:

<https://www.symplicity.com/products/insight.html>.

INTERROGATORY NO. 8:

Identify by name, title, role, and address any individual who may have knowledge of creation of INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 8:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing

Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity's undersigned counsel.

William Gerety
CEO
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Victoria Chapa
Marketing Manager
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Janet Sun
Product Manager
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Head of Sales
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

INTERROGATORY NO. 9:

Identify by name, title, role, and address any individual who may have knowledge of the use in commerce of INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 9:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of "any individual." Subject to and without waiver of the foregoing

Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity's undersigned counsel.

William Gerety
CEO
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Victoria Chapa
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Arlington, VA 2209

Janet Sun
Product Manager
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Head of Sales
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

INTERROGATORY NO. 10:

Identify by name, title, role, and address any individual who may have knowledge of any license or use agreements entered into by Symplicity relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 10:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of "any individual." Subject to and without waiver of the foregoing

Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity's undersigned counsel.

William Gerety
CEO
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Victoria Chapa
Marketing Manager
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Janet Sun
Product Manager
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Head of Sales
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

INTERROGATORY NO. 11:

Identify by name, title, role, and address any individual who may have knowledge of any common law trademark rights relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 11:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of "any individual." Subject to and without waiver of the foregoing

Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity's undersigned counsel.

William Gerety
CEO
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Victoria Chapa
Marketing Manager
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Arlington, VA 2209

Janet Sun
Product Manager
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Head of Sales
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

INTERROGATORY NO. 12:

Identify, by date, parties involved, and description, all oral or written communications relating to SHINE INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 12:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly

burdensome because it seeks the identification of “all oral or written communications.” Subject to the foregoing Specific and General Objections, Symplicity is not aware of any communications relating to SHINE INSIGHT outside of this proceeding, and Symplicity will produce representative, non-privileged documents sufficient to identify communications relating to SHINE INSIGHT to the extent such documents are determined to exist after a reasonable search.

INTERROGATORY NO. 13:

Identify, by date, parties involved, and description, all oral or written communications relating to CONNECT INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 13:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications.” Subject to the foregoing Specific and General Objections, Symplicity is not aware of any communications relating to CONNECT INSIGHT other than communications with the USPTO in connection with the INSIGHT application. Such communications are available at:

http://tsdr.uspto.gov/#caseNumber=86533567&caseType=SERIAL_NO&searchType=statusSearch.

INTERROGATORY NO. 14:

Identify, by date, parties involved, and description, all oral or written communications relating to YOUTH INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 14:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications.” Subject to the foregoing Specific and General Objections, Symplicity is not aware of any communications relating to YOUTH INSIGHT other than communications with the USPTO in connection with the INSIGHT application. Such communications are available at:

http://tsdr.uspto.gov/#caseNumber=86533567&caseType=SERIAL_NO&searchType=statusSearch.

INTERROGATORY NO. 15:

Identify, by date, parties involved, and description, all oral or written communications relating to any threatened or actual disputes relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 15:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications” as well as information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing Specific and General Objections, Symplicity will produce representative, non-privileged documents sufficient to identify such communications to the extent such documents are determined to exist after a reasonable search.

INTERROGATORY NO. 16:

Explain the difference between educational institutions, colleges, and universities as enumerated in paragraph 2 of the Notice.

RESPONSE TO INTERROGATORY NO. 16:

Subject to the foregoing General Objections, “colleges” typically encompass institutions of higher learning, especially those providing a general or liberal arts education rather than technical or professional training, and which may be a constituent unit of a university, as well as community colleges. “Universities” typically encompass institutions of learning of the highest level, often having a college of liberal arts and a program of graduate studies, along with professional schools, such as law, medicine, and engineering. “Educational institutions” encompass both colleges and universities, as well as other educational institutions.

Dated: New York, New York
March 28, 2016

Respectfully submitted,

CROWELL & MORING LLP

By: /Sean E. Jackson/
Lora A. Moffatt
Sean E. Jackson
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*Attorneys for Opposer
Symplicity Corporation*

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March, 2016, a true and correct copy of the foregoing **SYMPPLICITY'S RESPONSES TO ACELERO'S FIRST SET OF INTERROGATORIES (NO. 1-16)** was caused to be served on counsel for the Applicant by electronic mail to:

Robert J. Koch, Esq.
Javier J. Ramos, Esq.
MILBANK, TWEED, HADLEY & McCLOY, LLP
1850 K Street N.W., Suite 1100
Washington, D.C. 20006
(202) 835-7500
rkoch@milbank.com
jramos@milbank.com

/Sean E. Jackson/
Sean E. Jackson

EXHIBIT 6

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

SYMPPLICITY CORPORATION,

Opposer,

v.

ACELERO LEARNING DATA AND
TECHNICAL ASSISTANCE, INC.,

Applicant.

Opposition. No. 91223510

U.S. Application. No.: 86/257,568

Mark: SHINE INSIGHT

**SYMPPLICITY'S RESPONSES TO ACELERO'S
FIRST SET OF REQUESTS FOR ADMISSION (NO. 1-46)**

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice of the United States Patent and Trademark Office ("USPTO"), Opposer Symplicity Corporation ("Symplicity"), by and through its undersigned counsel, hereby responds to Applicant Acelero Learning Data and Technical Assistance, Inc.'s ("Acelero") First Set of Requests for Admission (No. 1-46) ("Requests").

The following responses are based upon information presently available to Symplicity and its attorneys. Symplicity has not completed its investigation of the facts relating to this proceeding and has not completed discovery in this proceeding. The responses given herein are without prejudice to Symplicity's reserved right to supplement or to revise these responses if further investigation or discovery so requires.

GENERAL RESERVATIONS AND OBJECTIONS

Symplicity expressly reserves the right to modify, supplement, and/or amend its responses to these Requests as additional information may become available during discovery in this proceeding.

The following objections apply to each of the Requests. To the extent any specific objection is also made to a particular request, Symplicity does not waive or otherwise limit any general objection.

1. Symplicity objects to Acelero's definition of "You," "your," "Opposer," and "Symplicity" to the extent that the terms may include entities that are not parties to this Opposition or that Symplicity does not control.

2. Symplicity objects to the Requests to the extent that Acelero purports to impose requirements which exceed or conflict with those set forth in the Federal Rules of Civil Procedure or the Rules of Practice in Trademark Cases (37 C.F.R. Part 2).

3. Symplicity objects to each Request to the extent it requires Symplicity to make a legal conclusion, as opposed to seeking an admission "concerning facts, the application of law to fact, or opinions about either," and therefore is outside the scope of Federal Rule of Civil Procedure 36.

GENERAL DENIAL

Symplicity has attempted, in good faith, to respond to all existing Requests for Admission submitted by Acelero. Symplicity is not aware of any Request to which it has not responded.

To the extent that Symplicity may have inadvertently failed to respond to one or more such Requests for Admission in this proceeding, those Requests should be considered to be "Denied."

RESPONSES TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Admit that Symplicity did not use INSIGHT in commerce before December 2010.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 2:

Admit that Symplicity used INSIGHT in commerce after December 2010.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 3:

Admit that Symplicity did not use INSIGHT in commerce before April 24, 2014.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 4:

Admit that Symplicity did not continually use INSIGHT in commerce between December 2010 and April 24, 2014.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 5:

Admit that Symplicity ceased using INSIGHT in commerce for any period of time between December 2010 and April 24, 2014.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 6:

Admit that INSIGHT is not used in commerce for early education and child development curriculum and assessment computer software for administrators.

RESPONSE:

Symplicity objects to the Request as vague and ambiguous because it is unclear what is meant by “early education and child development curriculum and assessment”. Interpreting the Request as referring to pre-kindergarten curriculum and assessment, admitted.

REQUEST FOR ADMISSION NO. 7:

Admit that INSIGHT has not been used in commerce since December 2010 for early education and child development curriculum and assessment computer software for administrators.

RESPONSE:

Symplicity objects to the Request as vague and ambiguous because it is unclear what is meant by “early education and child development curriculum and assessment”. Interpreting the Request as referring to pre-kindergarten curriculum and assessment, admitted.

REQUEST FOR ADMISSION NO. 8:

Admit that INSIGHT is used in commerce for early education and child development curriculum and assessment computer software for administrators.

RESPONSE:

Symplicity objects to the Request as vague and ambiguous because it is unclear what is meant by “early education and child development curriculum and assessment”. Interpreting the Request as referring to pre-kindergarten curriculum and assessment, denied.

REQUEST FOR ADMISSION NO. 9:

Admit that INSIGHT has been used in commerce since December 2010 for early education and child development curriculum and assessment computer software for administrators.

RESPONSE:

Symplicity objects to the Request as vague and ambiguous because it is unclear what is meant by “early education and child development curriculum and assessment”. Interpreting the Request as referring to pre-kindergarten curriculum and assessment, denied.

REQUEST FOR ADMISSION NO. 10:

Admit that INSIGHT is not used in commerce for student information archiving and analysis computer software for administrators.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 11:

Admit that INSIGHT has not been used in commerce since December 2010 for student information archiving and analysis computer software for administrators.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 12:

Admit that INSIGHT is used in commerce for student information archiving and analysis computer software for administrators.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 13:

Admit that INSIGHT has been used in commerce since December 2010 for student information archiving and analysis computer software for administrators.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 14:

Admit that INSIGHT is not used in commerce for early education and child development program compliance monitoring computer software for administrators.

RESPONSE:

Symlicity objects to the Request as vague and ambiguous because it is unclear what is meant by “early education and child development program compliance monitoring”. Interpreting the Request as referring to pre-kindergarten program compliance monitoring, admitted.

REQUEST FOR ADMISSION NO. 15:

Admit that INSIGHT has not been used in commerce since December 2010 for early education and child development program compliance monitoring computer software for administrators.

RESPONSE:

Symlicity objects to the Request as vague and ambiguous because it is unclear what is meant by “early education and child development program compliance monitoring”. Interpreting the Request as referring to pre-kindergarten program compliance monitoring, admitted.

REQUEST FOR ADMISSION NO. 16:

Admit that INSIGHT is used in commerce for early education and child development program compliance monitoring computer software for administrators.

RESPONSE:

Symlicity objects to the Request as vague and ambiguous because it is unclear what is meant by “early education and child development program compliance monitoring”. Interpreting the Request as referring to pre-kindergarten program compliance monitoring, denied.

REQUEST FOR ADMISSION NO. 17:

Admit that INSIGHT has been used in commerce since December 2010 for early education and child development program compliance monitoring computer software for administrators.

RESPONSE:

Symplicity objects to the Request as vague and ambiguous because it is unclear what is meant by “early education and child development program compliance monitoring”. Interpreting the Request as referring to pre-kindergarten program compliance monitoring, denied.

REQUEST FOR ADMISSION NO. 18:

Admit that INSIGHT is not used in commerce for software as a service (“SAAS”) services featuring software for use by educational institutions, colleges, and universities for identifying and tracking at-risk students, case management, and creating a directory of tutors, counselors, assigned advisors, mentors, and campus offices.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 19:

Admit that INSIGHT has not been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for identifying and tracking at-risk students, case management, and creating a directory of tutors, counselors, assigned advisors, mentors, and campus offices.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 20:

Admit that INSIGHT is used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for identifying and tracking at-risk students, case management, and creating a directory of tutors, counselors, assigned advisors, mentors, and campus offices.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 21:

Admit that INSIGHT has been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for identifying and tracking at-risk students, case management, and creating a directory of tutors, counselors, assigned advisors, mentors, and campus offices.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 22:

Admit that INSIGHT is not used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for academic advising center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 23:

Admit that INSIGHT has not been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for academic advising center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 24:

Admit that INSIGHT is used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for academic advising center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 25:

Admit that INSIGHT has been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for academic advising center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 26:

Admit that INSIGHT is not used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for athletic advising office management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 27:

Admit that INSIGHT has not been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for athletic advising office management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 28:

Admit that INSIGHT is used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for athletic advising office management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 29:

Admit that INSIGHT has been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for athletic advising office management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 30:

Admit that INSIGHT is not used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for counseling center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, creating and maintaining a database of peer mentors, and centralized document management.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 31:

Admit that INSIGHT has not been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for counseling center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, creating and maintaining a database of peer mentors, and centralized document management.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 32:

Admit that INSIGHT is used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for counseling center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, creating and maintaining a database of peer mentors, and centralized document management.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 33:

Admit that INSIGHT has been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for counseling center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, creating and maintaining a database of peer mentors, and centralized document management.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 34:

Admit that Symplicity has received a legal opinion regarding common law trademark rights relating to INSIGHT.

RESPONSE:

Symplicity objects to this Request to the extent Acelero seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity. Subject to the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 35:

Admit that Symplicity has not received a legal opinion regarding common law trademark rights relating to INSIGHT.

RESPONSE:

Symplicity objects to this Request to the extent Acelero seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity. Subject to the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 36:

Admit that Symplicity has received a legal opinion regarding likelihood of confusion between INSIGHT and SHINE INSIGHT.

RESPONSE:

Symplicity objects to this Request to the extent Acelero seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity. Subject to the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 37:

Admit that Symplicity has not received a legal opinion regarding likelihood of confusion between INSIGHT and SHINE INSIGHT.

RESPONSE:

Symlicity objects to this Request to the extent Acelero seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity. Subject to the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 38:

Admit that Symlicity has received a legal opinion regarding likelihood of confusion between INSIGHT and YOUTH INSIGHT.

RESPONSE:

Symlicity objects to this Request to the extent Acelero seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity. Subject to the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 39:

Admit that Symlicity has not received a legal opinion regarding likelihood of confusion between INSIGHT and YOUTH INSIGHT.

RESPONSE:

Symlicity objects to this Request to the extent Acelero seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity. Subject to the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 40:

Admit that Symlicity has received a legal opinion regarding likelihood of confusion between INSIGHT and CONNECT INSIGHT.

RESPONSE:

Symlicity objects to this Request to the extent Acelero seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity. Subject to the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 41:

Admit that Symplicity has not received a legal opinion regarding likelihood of confusion between INSIGHT and CONNECT INSIGHT.

RESPONSE:

Symplicity objects to this Request to the extent Acelero seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity. Subject to the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 42:

Admit that Symplicity possessed knowledge of SHINE INSIGHT prior to filing U.S. trademark application no. 86/533,567.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 43:

Admit that Symplicity possessed knowledge of CONNECT INSIGHT prior to filing U.S. trademark application no. 86/533,567.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 44:

Admit that Symplicity possessed knowledge of YOUTH INSIGHT prior to filing U.S. trademark application no. 86/533,567.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 45:

Admit that Symplicity has performed analysis of market penetration of INSIGHT.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 46:

Admit that Symplicity has performed analysis of market recognition of INSIGHT.

RESPONSE:

Denied.

Dated: New York, New York
March 28, 2016

Respectfully submitted,

CROWELL & MORING LLP

By: /Sean E. Jackson/
Lora A. Moffatt
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*Attorneys for Opposer
Symplicity Corporation*

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March 2016, a true and correct copy of the foregoing **SYMPPLICITY'S RESPONSES TO ACELERO'S FIRST SET OF REQUESTS FOR ADMISSION (NO. 1-46)** was caused to be served on counsel for the Applicant by electronic mail to:

Robert J. Koch, Esq.
Javier J. Ramos, Esq.
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1850 K Street N.W., Suite 1100
Washington, D.C. 20006
(202) 835-7500
rkoch@milbank.com
jramos@milbank.com

/Sean E. Jackson/
Sean E. Jackson

EXHIBIT 7

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

SYMPPLICITY CORPORATION,

Opposer,

v.

ACELERO LEARNING DATA AND
TECHNICAL ASSISTANCE, INC.,

Applicant.

Opposition No. 91223510

U.S. Application No. 86/257,568

Mark: SHINE INSIGHT

**SYMPPLICITY'S AMENDED RESPONSES TO ACELERO'S
FIRST SET OF INTERROGATORIES (NO. 1-16)**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and Rule 2.120 of the Trademark Rules of Practice of the United States Patent and Trademark Office ("USPTO"), Opposer Symplicity Corporation ("Symplicity"), by and through its undersigned attorneys, hereby makes these amended responses to Applicant Acelero Learning Data and Technical Assistance, Inc.'s ("Acelero") First Set of Interrogatories (No. 1-16) ("Interrogatories").

The following responses are based upon information presently available to Symplicity and its attorneys. Symplicity has not completed its investigation of the facts relating to this case and has not completed discovery in this proceeding. The responses given herein are without prejudice to Symplicity's reserved right to supplement or to revise these responses if further investigation or discovery so requires.

GENERAL OBJECTIONS

Unless otherwise stated, these General Objections apply to each and every definition and instruction set forth in the Interrogatories, and Symplicity hereby specifically incorporates all of

these General Objections into each specific response, whether or not they are specifically referred to in the response. By setting forth specific objections, Symplicity does not intend to waive, limit, or supersede any of these general objections. Where a partial response can be made to a request that is otherwise objectionable, such response will be made without waiving any stated objection.

1. Symplicity objects to Acelero's definitions and instructions to the extent they are inconsistent with the appropriate Rules of Civil Procedure, including Rule 26 and 33, and the rules of the Trademark Trial and Appeal Board ("TTAB"). Symplicity will rely upon the Federal Rules of Civil Procedure, the TTAB Rules and governing case law with respect to the subject definitions, instructions and responses.

2. Symplicity objects to the Interrogatories to the extent they are not sufficiently limited or reasonably calculated to lead to discovery of admissible evidence or are overly broad, unduly burdensome, and/or premature.

3. Symplicity objects to the Interrogatories to the extent they contain misstatements of fact or inaccurate assumptions. Nothing in these responses shall be construed as constituting or implying an admission of any allegation or agreement with any assertion or characterization in any interrogatory.

4. Symplicity objects to the Interrogatories to the extent they use language calling for a legal conclusion. Symplicity's responses shall incorporate matters of fact only. None of Symplicity's responses shall be construed as stating or implying a conclusion of law concerning the matters referenced in any interrogatory.

5. Symplicity objects to the Interrogatories to the extent that Acelero seeks information protected by the attorney-client privilege, the attorney work-product doctrine, joint-defense and/or common interest privilege or any other applicable privilege or immunity.

6. Symplicity objects to the Interrogatories to the extent they call for confidential, trade secret or commercially sensitive information to be produced.

7. Symplicity objects to the Interrogatories to the extent they are overbroad, unduly burdensome, premature and/or seek information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

8. Symplicity objects to the Interrogatories to the extent that Acelero seeks information covered by a protective order or court order in another proceeding and/or is designated confidential by a third party.

9. Symplicity objects to the Interrogatories to the extent that Acelero seeks information that is not available to Symplicity after a reasonable search of its files and a reasonable inquiry of its current employees.

10. Symplicity objects to the Interrogatories to the extent Acelero seeks private, confidential, secret, proprietary and/or commercially-sensitive information of any third-party to whom Symplicity owes a duty of confidentiality.

11. Symplicity objects to Acelero's definition of "You," "your," "Opposer," and "Symplicity" to the extent that the terms may include entities that are not parties to this Opposition or that Symplicity does not control.

12. In those instances where the response to an Interrogatory can be derived from the business records, and the burden of deriving or ascertaining the answer is substantially the same for each of the parties, Symplicity will specify the records from which a complete answer may be

ascertained and afford Acelero's counsel a reasonable opportunity to audit, inspect, and copy such records or provide categorized copies of such records in accordance with Federal Rule of Civil Procedure 33(d).

13. Symplicity objects to the Interrogatories to the extent they are repetitive, overlapping, or duplicative.

14. Discovery in this matter is ongoing. Symplicity's responses to the following Interrogatories, therefore, are necessarily the subject of further and on-going investigation, and are based on the information presently known to Symplicity after a reasonable effort to locate information and documents called for by the Interrogatories. Accordingly, Symplicity's responses are without prejudice to its right to amend or supplement its responses as its investigation and discovery in this matter proceeds. Moreover, Symplicity's objections as set forth herein are made without prejudice to its right to assert any additional or supplemental objections should Symplicity discover additional grounds for such objections.

These General Objections apply to each of Symplicity's responses. To the extent that specific General Objections are cited in a specific response, those specific citations are provided because they are believed to be partially applicable to the specific requests and are not to be construed as a waiver of any other General Objections applicable to information falling within the scope of the request.

Symplicity expressly reserves the right to modify, supplement, and/or amend its responses to the Interrogatories as additional information is made available during discovery in this Proceeding.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify by name and date of first use in commerce, each product or service which INSIGHT is used, has been used, is intended to be used, or is associated with. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 1:

Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from U.S. Trademark Application Serial No. 86/533,567 (“the INSIGHT application”), documents relating to which are available at:

http://tsdr.uspto.gov/#caseNumber=86533567&caseType=SERIAL_NO&searchType=statusSearch.

Additional information responsive to this Interrogatory can be derived from:

<https://www.symplicity.com/products/insight.html>.

INTERROGATORY NO. 2:

For each product or service identified in response to Interrogatory No. 1, describe the channels of distribution and/or intended channels of distribution. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 2:

Subject to and without waiver of the foregoing General Objections, Symplicity utilizes salespeople to contact potential purchasers of its products, as well as its website, available at:

<https://www.symplicity.com/products/insight.html>

INTERROGATORY NO. 3:

For each product or service identified in response to Interrogatory No. 1, describe the geographic scope of all former, current, and contemplated use in commerce. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 3:

Subject to and without waiver of the foregoing General Objections, geographic scope is throughout the United States, as well as internationally.

INTERROGATORY NO. 4:

For each product or service identified in response to Interrogatory No. 1, identify by name and address all Educational Institutions using each product or service, the date of first use of each product or service by the institution, and the current status of the use of each product or service by the institution. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 4:

Symplicity objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and/or seeks information that is neither irrelevant nor reasonably calculated to lead to the discovery of admissible evidence. Symplicity also objects to this Interrogatory to the extent it seeks private, confidential, secret, proprietary and/or commercially-sensitive information of any third-party to whom Symplicity owes a duty of confidentiality. Subject to and without waiver of the foregoing Specific and General Objections, Symplicity will produce representative documents sufficient to identify the Educational Institutions using Symplicity's INSIGHT products and services.

INTERROGATORY NO. 5:

For each product or service identified in response to Interrogatory No. 1, identify the media or medium used to communicate INSIGHT to the public in relation to each product or service. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 5:

Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from:

<https://www.symplicity.com/products/insight.html>.

INTERROGATORY NO. 6:

For each product or service identified in response to Interrogatory No. 1, describe all analyses performed of market penetration and market awareness of the same. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 6:

Symplicity objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and/or seeks information that is neither irrelevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing Specific and General Objections, Symplicity is not aware of any analyses “performed of market penetration and market awareness.”

INTERROGATORY NO. 7:

For each product or service identified in response to Interrogatory No. 1, identify all websites (by hyperlink) advertising or marketing each product or service, the date the website was first accessible to the public, the duration of accessibility by the public of the website, and the geographic scope of the website’s user base. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 7:

Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from:

<https://www.symplicity.com/products/insight.html>.

INTERROGATORY NO. 8:

Identify by name, title, role, and address any individual who may have knowledge of creation of INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 8:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing

Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity's undersigned counsel.

William Gerety
CEO
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Victoria Chapa
Marketing Manager
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Janet Sun
Product Manager
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Head of Sales
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

AMENDED RESPONSE TO INTERROGATORY NO. 8:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of "any individual." Subject to and without waiver of the foregoing Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity's undersigned counsel.

William Gerety
CEO
Symplicity Corporation
1560 Wilson Boulevard, Suite 550

Arlington, VA 2209

Victoria Chapa
Marketing Manager
Syplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Janet Sun
Head of Product
Syplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Director of Customer Support
Syplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

INTERROGATORY NO. 9:

Identify by name, title, role, and address any individual who may have knowledge of the use in commerce of INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 9:

Syplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing Specific and General Objections, Syplicity identifies the following individuals, who shall be contacted only through Syplicity’s undersigned counsel.

William Gerety
CEO
Syplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Victoria Chapa
Marketing Manager
Simplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Janet Sun
Product Manager
Simplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Head of Sales
Simplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

AMENDED RESPONSE TO INTERROGATORY NO. 9:

Simplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing Specific and General Objections, Simplicity identifies the following individuals, who shall be contacted only through Simplicity’s undersigned counsel.

William Gerety
CEO
Simplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Victoria Chapa
Marketing Manager
Simplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Janet Sun
Head of Product
Simplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Director of Customer Support
Simplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

INTERROGATORY NO. 10:

Identify by name, title, role, and address any individual who may have knowledge of any license or use agreements entered into by Simplicity relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 10:

Simplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing Specific and General Objections, Simplicity identifies the following individuals, who shall be contacted only through Simplicity’s undersigned counsel.

William Gerety
CEO
Simplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Victoria Chapa
Marketing Manager
Simplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Janet Sun
Product Manager

Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Head of Sales
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

AMENDED RESPONSE TO INTERROGATORY NO. 10:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity’s undersigned counsel.

William Gerety
CEO
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Victoria Chapa
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Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Janet Sun
Head of Product
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Director of Customer Support
Symplicity Corporation

1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

INTERROGATORY NO. 11:

Identify by name, title, role, and address any individual who may have knowledge of any common law trademark rights relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 11:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity’s undersigned counsel.

William Gerety
CEO
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Victoria Chapa
Marketing Manager
Symplicity Corporation
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Arlington, VA 2209

Janet Sun
Product Manager
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Head of Sales
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

AMENDED RESPONSE TO INTERROGATORY NO. 11:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity’s undersigned counsel.

William Gerety
CEO
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Victoria Chapa
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1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Janet Sun
Head of Product
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Director of Customer Support
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

INTERROGATORY NO. 12:

Identify, by date, parties involved, and description, all oral or written communications relating to SHINE INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 12:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications.” Subject to the foregoing Specific and General Objections, Symplicity is not aware of any communications relating to SHINE INSIGHT outside of this proceeding, and Symplicity will produce representative, non-privileged documents sufficient to identify communications relating to SHINE INSIGHT to the extent such documents are determined to exist after a reasonable search.

INTERROGATORY NO. 13:

Identify, by date, parties involved, and description, all oral or written communications relating to CONNECT INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 13:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications.” Subject to the foregoing Specific and General Objections, Symplicity is not aware of any communications relating to CONNECT INSIGHT other than communications with the USPTO in connection with the INSIGHT application. Such communications are available at:

http://tsdr.uspto.gov/#caseNumber=86533567&caseType=SERIAL_NO&searchType=statusSearch.

INTERROGATORY NO. 14:

Identify, by date, parties involved, and description, all oral or written communications relating to YOUTH INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 14:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications.” Subject to the foregoing Specific and General Objections, Symplicity is not aware of any communications relating to YOUTH INSIGHT other than communications with the USPTO in connection with the INSIGHT application. Such communications are available at:

http://tsdr.uspto.gov/#caseNumber=86533567&caseType=SERIAL_NO&searchType=statusSearch.

INTERROGATORY NO. 15:

Identify, by date, parties involved, and description, all oral or written communications relating to any threatened or actual disputes relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 15:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications” as well as information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing Specific and General Objections, Symplicity will

produce representative, non-privileged documents sufficient to identify such communications to the extent such documents are determined to exist after a reasonable search.

INTERROGATORY NO. 16:

Explain the difference between educational institutions, colleges, and universities as enumerated in paragraph 2 of the Notice.

RESPONSE TO INTERROGATORY NO. 16:

Subject to the foregoing General Objections, “colleges” typically encompass institutions of higher learning, especially those providing a general or liberal arts education rather than technical or professional training, and which may be a constituent unit of a university, as well as community colleges. “Universities” typically encompass institutions of learning of the highest level, often having a college of liberal arts and a program of graduate studies, along with professional schools, such as law, medicine, and engineering. “Educational institutions” encompass both colleges and universities, as well as other educational institutions.

Dated: New York, New York
March 31, 2016

Respectfully submitted,

CROWELL & MORING LLP

By: /Sean E. Jackson/
Lora A. Moffatt
Sean E. Jackson
Preetha Chakrabarti
590 Madison Avenue
New York, NY 10022
(212) 223-4000
lmoffatt@crowell.com
sjackson@crowell.com
pchakrabarti@crowell.com

*Attorneys for Opposer
Simplicity Corporation*

VERIFICATION

I, Samuel R. Ramer, hereby certify that the facts set forth in the foregoing Symplicity's Amended Responses to Acelero's First Set of Interrogatories (No. 1-16) are true to the best of my knowledge, based in part on information provided to me by others and on documents being produced by Opposer, Symplicity Corporation ("Symplicity"). I further certify that I am authorized to sign this Verification on behalf of Symplicity. I understand that if the foregoing statements made by me are willfully false, I am subject to punishment.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: March 31, 2016



Samuel R. Ramer
General Counsel
Vice President of Government Relations
Symplicity Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of March, 2016, a true and correct copy of the foregoing **SYMPPLICITY'S AMENDED RESPONSES TO ACELERO'S FIRST SET OF INTERROGATORIES (NO. 1-16)** was caused to be served on counsel for the Applicant by electronic mail to:

Robert J. Koch, Esq.
Javier J. Ramos, Esq.
MILBANK, TWEED, HADLEY & McCLOY, LLP
1850 K Street N.W., Suite 1100
Washington, D.C. 20006
(202) 835-7500
rkoch@milbank.com
jramos@milbank.com

/Sean E. Jackson/
Sean E. Jackson

EXHIBIT 8

MILBANK, TWEED, HADLEY & MCCLOY LLP

1850 K STREET, NW, SUITE 1100

WASHINGTON, DC 20006

202-835-7500

FAX: 202-835-7586

Javier J. Ramos

DIRECT DIAL NUMBER

202-835-7507

E-MAIL: JRamos@milbank.com

April 14, 2016

BEIJING

8610-5969-2700

FAX: 8610-5969-2707

HONG KONG

852-2971-4888

FAX: 852-2840-0792

SEOUL

822-6137-2600

FAX: 822-6137-2626

SINGAPORE

65-6428-2400

FAX: 65-6428-2500

TOKYO

813-5410-2801

FAX: 813-5410-2891

SÃO PAULO

55-11-3927-7700

FAX: 55-11-3927-7777

NEW YORK

212-530-5000

FAX: 212-530-5219

LOS ANGELES

213-892-4000

FAX: 213-629-5063

LONDON

44-20-7615-3000

FAX: 44-20-7615-3100

FRANKFURT

49-69-71914-3400

FAX: 49-69-71914-3500

MUNICH

49-89-25559-3600

FAX: 49-89-25559-3700

BY E-MAIL

Sean Jackson, Esq.
Crowell & Moring LLP
590 Madison Avenue
20th Floor
New York, NY 10022-2544

Re: USPTO Opposition No. 91223510 – Symplicity Corp. v. Acelero Learning Data & Technical Assistance, Inc.

Dear Sean,

We write to address deficiencies in Symplicity's first set of responses to Acelero's First Set of Requests for Production of Documents and Things (No. 1-38) ("Document Requests"), First Set of Interrogatories (No. 1-16) ("Interrogatories"), and First Set of Requests for Admission (No 1-46) ("Requests for Admission"). Symplicity has failed to fulfill its obligations, pursuant to 37 C.F.R. 2.120 and Fed. R. Civ. P. 26(g)(1) and 36, to fully respond in good faith to Acelero's discovery requests. *See, e.g., Panda Travel Inc. v Resort Option Enterps., Inc.*, 94 USPQ2d 1789, 1791 (TTAB 2009) ("Each party has a duty to make a good faith effort to satisfy the reasonable and appropriate discovery needs of its adversary.")

Document Requests

To date, Symplicity has produced no documents in response to the Document Requests. Please let us know when we can expect production of documents. Also, please inform as to when you

Sean E. Jackson, Esq.
April 14, 2016
Page 2

expect to produce a privilege log regarding any documents being withheld for attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

Regarding Document Request nos. 7-12, 21, and 31, Symplicity objects to producing documents “subject to any confidentiality and/or non-disclosure agreements.” This is not a valid ground for withholding documents from production as such documents can be produced pursuant to a Protective Order and/or third parties to any such confidentiality or non-disclosure agreements can consent to production of such documents, or portions thereof. *See, e.g.*, TBMP § 412 et seq. Please let us know if you have begun or will request such permissions from third parties to produce any relevant documents subject to confidentiality obligations.

Regarding Document Request nos. 16-18, Symplicity is obligated to produce documents evidencing the actual use of INSIGHT and the geographic scope thereof. As Symplicity’s responses to Interrogatory nos. 1, 2, 5, and 7 seem to suggest, use of INSIGHT has primarily been through Symplicity’s website (<https://www.symplicity.com/products/insight.html>). Thus, such information concerning Symplicity’s use of INSIGHT via its website is discoverable. *See, e.g., Double J of Broward Inc. v. Skalony Sportswear GmbH*, 21 USPQ2d 1609, 1613 (TTAB 1991) (use or intended use of applicant’s mark in commerce with U.S. is relevant).

Regarding Document Request nos. 26-29, you refused to produce any legal opinions regarding INSIGHT, SHINE INSIGHT, CONNECT INSIGHT, or YOUTH INSIGHT. Please confirm that you will not be producing any documents subject to these requests.

Regarding Document Request nos. 32 and 38, you refused to produce any documents reflecting analysis of likelihood of confusion and common law trademark rights relating to INSIGHT. Please confirm that you will not be producing any documents subject to these requests.

Interrogatories:

Symplicity served its original response to the Interrogatories on March 28, 2016 without a certification statement, in violation of Fed. R. Civ. P. 33(b)(5). Thus, Symplicity failed to serve its response within 30 days of the date of service of the Interrogatories. Fed. R. Civ. P. 33(b)(2); 37 CFR § 2.120(a)(3). Symplicity attempted to remedy this deficiency by serving an amended response on March 31, 2016 including the proper statement. This is not enough. Unless Symplicity can prove that its failure to properly respond to the Interrogatories by March 28, 2016 was caused by excusable neglect, it has forfeited its right to object to the interrogatories on their merits. *See, e.g.*, TBMP § 405.04(a) (“Objections going to the merits of an interrogatory ... include claims that the information sought by the request is irrelevant, overly broad, unduly vague and ambiguous, burdensome and oppressive, or not likely to lead to the discovery of admissible evidence.”).

Sean E. Jackson, Esq.
April 14, 2016
Page 3

Symplicity's responses are facially deficient because they do not answer the interrogatories as posed. For example, Interrogatory no. 1 requires Symplicity to "Identify by name and date of first use in commerce, each product or service which INSIGHT is used, has been used, is intended to be used, or is associated with. Identify by control number all documents responsive to this interrogatory." Instead of providing an answer as required, Symplicity has merely cited the USPTO's TSDR database for application 86/533,567 and the website <https://www.symplicity.com/products/insight.html>. No listing of products or services was provided, and no documents relating to this answer were identified.

To be sure, such information concerning a party's first use of its involved mark is discoverable. *See, e.g., Georgia-Pacific Corp. v. Great Plains Bag Co.*, 190 USPQ 193, 195-96 (TTAB 1976) (dates petitioner's plants first began production of goods bearing mark are pertinent to claim of priority); *Miller & Fink Corp. v. Servicemaster Hospital Corp.*, 184 USPQ 495, 496 (TTAB 1975) (must provide name, address and affiliation of persons to whom service was first rendered); *see also Double J of Broward Inc. v. Skalony Sportswear GmbH*, 21 USPQ2d 1609, 1613 (TTAB 1991) (use or intended use of applicant's mark in commerce with U.S. is relevant).

Symplicity is similarly deficient in its responses to Interrogatory nos. 2-5 and 7. Specifically regarding the response to Interrogatory no. 7, it is improper under Fed. R. Civ. P. 33(d) to attempt to make a party "derive" a response to an interrogatory by citation to a website. We expect that Symplicity will remedy the aforementioned deficiencies as soon as possible.

Regarding Interrogatory nos. 4, 12, and 15, the mere fact that "Symplicity will produce representative documents sufficient to" answer the interrogatory is not a valid response, under Fed. R. Civ. P. 33(d) or otherwise. A promise to produce documents is akin to providing no response whatsoever.

Requests for Admissions:

Regarding Request for Admission nos. 6-9, Acelero challenges Symplicity's recategorization of the term "early education and child development curriculum and assessment" to "as referring to pre-kindergarten curriculum and assessment." On the one hand, in the Notice of Opposition, Symplicity claims that registration of SHINE INSIGHT, having this very phrase in the goods and services statement, would likely cause confusion with INSIGHT. But on the other hand, Symplicity now argues that it cannot determine the meaning of the same phrase for purposes of answering the request for admission. Symplicity cannot have it both ways and its response is deficient.

Regarding Request for Admission nos. 34-41, Symplicity denied all requests subject to a privilege objection. However, the identification of discovery documents (as opposed to their substance) is not privileged or confidential. *See Goodyear Tire & Rubber Co. v. Tyrco*

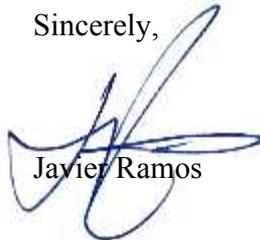
Sean E. Jackson, Esq.
April 14, 2016
Page 4

Industries, 186 USPQ 207, 208 (TTAB 1975) (fact that client received legal opinions and identity of documents related thereto, not privileged). Therefore, to the extent that Symplicity's denial is based on the alleged privileged nature of the information sought, appropriate supplementation to Symplicity's responses is warranted.

Please let us know when we can expect responses to each of the enumerated deficiencies.

We are available to discuss this letter and settlement of the opposition tomorrow and all of next week. We are still waiting on your response regarding our proposed modification to the draft settlement agreement. *See* Exh. A (e-mail correspondences between J. Ramos and S. Jackson). More than three weeks have passed now since our last substantive discussion regarding settlement terms. We are still interested in reaching settlement in this matter.

Sincerely,



Javier Ramos

JJR/SRA

Enclosures: Exhibit A

cc: Robert J. Koch, Esq.
Stephanie R. Amoroso, Esq.
Lora Moffat, Esq.
Preetha Chakrabarti, Esq.
Alison J. Field, Esq.

Exhibit A

From: [Jackson, Sean](#)
To: [Ramos, Javier](#)
Cc: [Koch, Robert](#); [Moffatt, Lora](#); [Chakrabarti, Preetha](#); [Field, Alison J.](#)
Subject: Re: Opposition No. 91223510 - SHINE INSIGHT
Date: Thursday, March 31, 2016 1:40:00 PM

Javier,

I have not yet received instruction, but am working to do so. I'll contact you as soon as I know more.

Regards,
Sean

Sent from my iPhone

On Mar 31, 2016, at 1:29 PM, Ramos, Javier <JRamos@milbank.com<<mailto:JRamos@milbank.com>>> wrote:

Sean,
This e-mail follows up my call of a few minutes ago. Have you received instruction from your client regarding our proposed modification to the settlement agreement? If not, do you plan on doing so in the near future?

Regards,
Javier

Javier J. Ramos | Milbank
Admitted in Virginia and Washington, D.C. only
Maximilianstr. 15 | D - 80539 München
T: +49 89 25559 3633 | F: +49 89 25559 3700
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T: +1 202.835.7507 | F: +1 202.263.7507
jramos@milbank.com<<mailto:jramos@milbank.com>> | www.milbank.com<<http://www.milbank.com/>>

From: Ramos, Javier
Sent: Wednesday, March 30, 2016 11:48 AM
To: 'Jackson, Sean'
Cc: Koch, Robert; Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.
Subject: RE: Opposition No. 91223510 - SHINE INSIGHT

Sean,

When are you available to continue our settlement discussions this week. We are generally available anytime.

Regards,
Javier

Javier J. Ramos | Milbank
Admitted in Virginia and Washington, D.C. only
Maximilianstr. 15 | D - 80539 München
T: +49 89 25559 3633 | F: +49 89 25559 3700
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1850 K Street NW, Suite 1100 | Washington, D.C. 20006
T: +1 202.835.7507 | F: +1 202.263.7507
jramos@milbank.com<<mailto:jramos@milbank.com>> | www.milbank.com<<http://www.milbank.com/>>

From: Jackson, Sean [<mailto:SJackson@crowell.com>]
Sent: Monday, March 28, 2016 6:06 PM
To: Ramos, Javier
Cc: Koch, Robert; Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.
Subject: Opposition No. 91223510 - SHINE INSIGHT

Javier,

Attached please find Symplicity's responses to Acelero's first set of discovery requests. As I mentioned in my email of last week, I hope to continue settlement discussions this week.

Regards,
Sean

Sean E. Jackson
sjackson@crowell.com<<mailto:sjackson@crowell.com>>
Direct 1.212.803.4038 | Fax: 1.212.223.4134

Crowell & Moring LLP | www.crowell.com<<http://www.crowell.com/>>
590 Madison Avenue
New York, NY 10022

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EXHIBIT 9



Sean Jackson
(212) 803-4038
SJackson@crowell.com

May 2, 2016

VIA FTP

Javier J. Ramos, Esq.
Milbank, Tweed, Hadley & McCloy, LLP
1850 K Street NW, Suite 1100
Washington, DC 20006
(202) 835-7500

Re: *Opposition No. 91223510 – SHINE INSIGHT – Symplicity Corp. v. Acelero Learning Data & Technical Assistance, Inc.*

Dear Javier:

Attached via FTP are documents bearing Bates Nos. SYMP000001 – SYMP000213, which are being produced to Acelero subject to the terms of the TTAB's Standardized Protective Agreement. Please note that some documents have been designated "Confidential" and others have been designated "Highly Confidential," pursuant to the Standardized Protective Agreement.

Very truly yours,

A handwritten signature in black ink that reads "Sean E. Jackson".

Sean E. Jackson

Attachments

cc: Robert J. Koch, Esq.
Stephanie R. Amoroso, Esq.
Lora A. Moffatt, Esq.
Preetha Chakrabarti, Esq.



Sean Jackson
(212) 803-4038
SJackson@crowell.com

May 6, 2016

VIA E-MAIL

Javier J. Ramos, Esq.
Milbank, Tweed, Hadley & McCloy, LLP
1850 K Street NW, Suite 1100
Washington, DC 20006
(202) 835-7500

Re: *Opposition No. 91223510 – SHINE INSIGHT – Symplicity Corp. v. Acelero Learning Data & Technical Assistance, Inc.*

Dear Javier:

Attached via electronic mail are documents bearing Bates Nos. SYMP000214 – SYMP000221, which are being produced to Acelero subject to the terms of the TTAB’s Standardized Protective Agreement. Please note that some documents have been designated “Highly Confidential” and others have been designated “Trade Secret / Commercially Sensitive,” pursuant to the Standardized Protective Agreement.

Very truly yours,

A handwritten signature in black ink that reads "Sean E. Jackson".

Sean E. Jackson

Attachments

cc: Robert J. Koch, Esq.
Stephanie R. Amoroso, Esq.
Lora A. Moffatt, Esq.
Preetha Chakrabarti, Esq.



Sean Jackson
(212) 803-4038
SJackson@crowell.com

May 19, 2016

VIA E-MAIL

Javier J. Ramos, Esq.
Milbank, Tweed, Hadley & McCloy, LLP
1850 K Street NW, Suite 1100
Washington, DC 20006
(202) 835-7500

Re: *Opposition No. 91223510 – SHINE INSIGHT – Symplicity Corp. v. Acelero Learning Data & Technical Assistance, Inc.*

Dear Javier:

Attached via electronic mail are documents bearing Bates Nos. SYMP000222 – SYMP000378, which are being produced to Acelero subject to the terms of the TTAB's Standardized Protective Agreement. Please note that these documents have been designated "Trade Secret / Commercially Sensitive," pursuant to the Standardized Protective Agreement.

Very truly yours,

A handwritten signature in black ink that reads "Sean E. Jackson".

Sean E. Jackson

Attachments

cc: Robert J. Koch, Esq.
Stephanie R. Amoroso, Esq.
Lora A. Moffatt, Esq.
Preetha Chakrabarti, Esq.



Sean Jackson
(212) 803-4038
SJackson@crowell.com

May 20, 2016

VIA FTP

Javier J. Ramos, Esq.
Milbank, Tweed, Hadley & McCloy, LLP
1850 K Street NW, Suite 1100
Washington, DC 20006
(202) 835-7500

Re: *Opposition No. 91223510 – SHINE INSIGHT – Symplicity Corp. v. Acelero Learning Data & Technical Assistance, Inc.*

Dear Javier:

Attached via FTP are documents bearing Bates Nos. SYMP000379 – SYMP000570, which are being produced to Acelero subject to the terms of the TTAB's Standardized Protective Agreement. Please note that these documents have been designated "Trade Secret / Commercially Sensitive," pursuant to the Standardized Protective Agreement.

Very truly yours,

A handwritten signature in black ink that reads "Sean E. Jackson".

Sean E. Jackson

Attachments

cc: Robert J. Koch, Esq.
Stephanie R. Amoroso, Esq.
Lora A. Moffatt, Esq.
Preetha Chakrabarti, Esq.



Sean Jackson
(212) 803-4038
SJackson@crowell.com

May 23, 2016

VIA FTP

Javier J. Ramos, Esq.
Milbank, Tweed, Hadley & McCloy, LLP
1850 K Street NW, Suite 1100
Washington, DC 20006
(202) 835-7500

Re: *Opposition No. 91223510 – SHINE INSIGHT – Symplicity Corp. v. Acelero Learning Data & Technical Assistance, Inc.*

Dear Javier:

Attached via FTP are documents bearing Bates Nos. SYMP000571 – SYMP000962, which are being produced to Acelero subject to the terms of the TTAB's Standardized Protective Agreement. Please note that these documents have been designated "Trade Secret / Commercially Sensitive," pursuant to the Standardized Protective Agreement.

Very truly yours,

A handwritten signature in black ink that reads "Sean E. Jackson".

Sean E. Jackson

Attachments

cc: Robert J. Koch, Esq.
Stephanie R. Amoroso, Esq.
Lora A. Moffatt, Esq.
Preetha Chakrabarti, Esq.



Sean Jackson
(212) 803-4038
SJackson@crowell.com

May 24, 2016

VIA FTP

Javier J. Ramos, Esq.
Milbank, Tweed, Hadley & McCloy, LLP
1850 K Street NW, Suite 1100
Washington, DC 20006
(202) 835-7500

Re: *Opposition No. 91223510 – SHINE INSIGHT – Symplicity Corp. v. Acelero Learning Data & Technical Assistance, Inc.*

Dear Javier:

Attached via FTP are documents bearing Bates Nos. SYMP000963 – SYMP001145, which are being produced to Acelero subject to the terms of the TTAB's Standardized Protective Agreement. Please note that these documents have been designated "Trade Secret / Commercially Sensitive," pursuant to the Standardized Protective Agreement.

Very truly yours,

A handwritten signature in black ink that reads "Sean E. Jackson".

Sean E. Jackson

Attachments

cc: Robert J. Koch, Esq.
Stephanie R. Amoroso, Esq.
Lora A. Moffatt, Esq.
Preetha Chakrabarti, Esq.



Sean Jackson
(212) 803-4038
SJackson@crowell.com

June 8, 2016

VIA E-MAIL

Javier J. Ramos, Esq.
Milbank, Tweed, Hadley & McCloy, LLP
1850 K Street NW, Suite 1100
Washington, DC 20006
(202) 835-7500

Re: *Opposition No. 91223510 – SHINE INSIGHT – Symplicity Corp. v. Acelero Learning Data & Technical Assistance, Inc.*

Dear Javier:

Attached via e-mail are documents bearing Bates Nos. SYMP001146 – SYMP001293, which are being produced to Acelero subject to the terms of the TTAB's Standardized Protective Agreement. Please note that these documents have been designated "Highly Confidential," pursuant to the Standardized Protective Agreement.

Very truly yours,

A handwritten signature in black ink that reads "Sean E. Jackson".

Sean E. Jackson

Attachments

cc: Robert J. Koch, Esq.
Stephanie R. Amoroso, Esq.
Lora A. Moffatt, Esq.
Preetha Chakrabarti, Esq.

EXHIBIT 10



Sean Jackson
(212) 803-4038
SJackson@crowell.com

May 19, 2016

VIA E-MAIL

Javier J. Ramos, Esq.
Milbank, Tweed, Hadley & McCloy, LLP
1850 K Street NW, Suite 1100
Washington, DC 20006
(202) 835-7500

Re: *Opposition No. 91223510 – SHINE INSIGHT – Symplicity Corp. v. Acelero Learning Data & Technical Assistance, Inc.*

Dear Javier:

This letter responds to your letter of April 14, 2016. We disagree that Symplicity has failed to fulfill its obligations and respond in good faith to Acelero's discovery requests. Symplicity's investigation in connection with this matter is on-going and Symplicity will supplement its discovery responses as appropriate.

As you know, Symplicity produced responsive documents to Acelero on May 2 and May 6, 2016. As Symplicity's investigation continues, additional responsive, non-privileged documents will be produced to the extent they exist and are located after a reasonable search. To the extent responsive privileged documents exist and are located after a reasonable search, a privilege log will be produced identifying any such documents.

With regard to Acelero's Document Request Nos. 7-12, 21, and 31, Symplicity is not withholding documents. Non-privileged documents responsive to a number of these requests have been produced. *See, e.g.*, SYMP000212-SYMP000213; SYMP000218-SYMP000221.

Regarding Acelero's Document Request Nos. 16-18, responsive, non-privileged documents that have been located have been produced. *See, e.g.*, SYMP000038-SYMP000059; SYMP000145-SYMP000158.

Regarding Acelero's Document Request Nos. 26-29, 32, and 38, Symplicity objects to those requests as seeking documents that are protected from discovery by the attorney-client privilege and/or work-product immunity. Symplicity does not intend to produce documents that

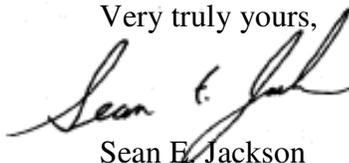
Javier J. Ramos, Esq.
May 19, 2016
Page 2

are protected from disclosure by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. As indicated above, to the extent responsive privileged documents exist and are located after a reasonable search, a privilege log will be produced identifying any such documents.

With regard to Symplicity's responses to Acelero's Interrogatories, we disagree that there is any violation or any forfeiture of any objections, and note that Acelero's contention is belied by the fact that Symplicity's amended interrogatory responses, which contain identical substantive responses to those served on March 28 (except for a correction to an individual's title), were served a mere three (3) days after Symplicity's initial responses were served. In view of Symplicity's continuing investigation in connection with this matter, and the responsive information that has been provided to Acelero, Symplicity expects to be able to provide supplemented interrogatory responses during the week of May 23, 2016.

Regarding Acelero's Requests for Admission Nos. 6-9, Symplicity disagrees that it has "recategorized" any terms. In its Notice of Opposition, Symplicity simply recites the phrase used by Acelero in its own identification of goods and services. Acelero's Requests for Admission are quite different, seeking admissions regarding Symplicity's use of its INSIGHT mark, and not Acelero's purported or intended use of the SHINE INSIGHT mark. Symplicity's responses are not deficient and are consistent with Acelero's own Instruction No. 2 set forth in its First Set of Requests for Admission (No. 1-46). Concerning Acelero's Requests for Admission Nos. 34-41, Symplicity's denials are not based on an asserted privilege, but rather are based on the facts set forth in Acelero's requests and the information presently available to Symplicity based on its continuing investigation in connection with this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sean E. Jackson". The signature is fluid and cursive, with the first name "Sean" being the most prominent.

Sean E. Jackson

cc: Robert J. Koch, Esq.
Stephanie R. Amoroso, Esq.
Lora A. Moffatt, Esq.
Preetha Chakrabarti, Esq.

EXHIBIT 11

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

SYMPPLICITY CORPORATION,

Opposer,

v.

ACELERO LEARNING DATA AND
TECHNICAL ASSISTANCE, INC.,

Applicant.

Opposition No. 91223510

U.S. Application No. 86/257,568

Mark: SHINE INSIGHT

**SYMPPLICITY'S SECOND AMENDED RESPONSES TO ACELERO'S
FIRST SET OF INTERROGATORIES (NO. 1-16)**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and Rule 2.120 of the Trademark Rules of Practice of the United States Patent and Trademark Office ("USPTO"), Opposer Symplicity Corporation ("Symplicity"), by and through its undersigned attorneys, hereby makes these second amended responses to Applicant Acelero Learning Data and Technical Assistance, Inc.'s ("Acelero") First Set of Interrogatories (No. 1-16) ("Interrogatories").

The following responses are based upon information presently available to Symplicity and its attorneys. Symplicity has not completed its investigation of the facts relating to this case and has not completed discovery in this proceeding. The responses given herein are without prejudice to Symplicity's reserved right to supplement or to revise these responses if further investigation or discovery so requires.

GENERAL OBJECTIONS

Unless otherwise stated, these General Objections apply to each and every definition and instruction set forth in the Interrogatories, and Symplicity hereby specifically incorporates all of these General Objections into each specific response, whether or not they are specifically referred to in the response. By setting forth specific objections, Symplicity does not intend to waive, limit, or supersede any of these general objections. Where a partial response can be made to a request that is otherwise objectionable, such response will be made without waiving any stated objection.

1. Symplicity objects to Acelero's definitions and instructions to the extent they are inconsistent with the appropriate Rules of Civil Procedure, including Rule 26 and 33, and the rules of the Trademark Trial and Appeal Board ("TTAB"). Symplicity will rely upon the Federal Rules of Civil Procedure, the TTAB Rules and governing case law with respect to the subject definitions, instructions and responses.

2. Symplicity objects to the Interrogatories to the extent they are not sufficiently limited or reasonably calculated to lead to discovery of admissible evidence or are overly broad, unduly burdensome, and/or premature.

3. Symplicity objects to the Interrogatories to the extent they contain misstatements of fact or inaccurate assumptions. Nothing in these responses shall be construed as constituting or implying an admission of any allegation or agreement with any assertion or characterization in any interrogatory.

4. Symplicity objects to the Interrogatories to the extent they use language calling for a legal conclusion. Symplicity's responses shall incorporate matters of fact only. None of

Symplicity's responses shall be construed as stating or implying a conclusion of law concerning the matters referenced in any interrogatory.

5. Symplicity objects to the Interrogatories to the extent that Acelero seeks information protected by the attorney-client privilege, the attorney work-product doctrine, joint-defense and/or common interest privilege or any other applicable privilege or immunity.

6. Symplicity objects to the Interrogatories to the extent they call for confidential, trade secret or commercially sensitive information to be produced.

7. Symplicity objects to the Interrogatories to the extent they are overbroad, unduly burdensome, premature and/or seek information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

8. Symplicity objects to the Interrogatories to the extent that Acelero seeks information covered by a protective order or court order in another proceeding and/or is designated confidential by a third party.

9. Symplicity objects to the Interrogatories to the extent that Acelero seeks information that is not available to Symplicity after a reasonable search of its files and a reasonable inquiry of its current employees.

10. Symplicity objects to the Interrogatories to the extent Acelero seeks private, confidential, secret, proprietary and/or commercially-sensitive information of any third-party to whom Symplicity owes a duty of confidentiality.

11. Symplicity objects to Acelero's definition of "You," "your," "Opposer," and "Symplicity" to the extent that the terms may include entities that are not parties to this Opposition or that Symplicity does not control.

12. In those instances where the response to an Interrogatory can be derived from the business records, and the burden of deriving or ascertaining the answer is substantially the same for each of the parties, Symplicity will specify the records from which a complete answer may be ascertained and afford Acelero's counsel a reasonable opportunity to audit, inspect, and copy such records or provide categorized copies of such records in accordance with Federal Rule of Civil Procedure 33(d).

13. Symplicity objects to the Interrogatories to the extent they are repetitive, overlapping, or duplicative.

14. Discovery in this matter is ongoing. Symplicity's responses to the following Interrogatories, therefore, are necessarily the subject of further and on-going investigation, and are based on the information presently known to Symplicity after a reasonable effort to locate information and documents called for by the Interrogatories. Accordingly, Symplicity's responses are without prejudice to its right to amend or supplement its responses as its investigation and discovery in this matter proceeds. Moreover, Symplicity's objections as set forth herein are made without prejudice to its right to assert any additional or supplemental objections should Symplicity discover additional grounds for such objections.

These General Objections apply to each of Symplicity's responses. To the extent that specific General Objections are cited in a specific response, those specific citations are provided because they are believed to be partially applicable to the specific requests and are not to be construed as a waiver of any other General Objections applicable to information falling within the scope of the request.

Symplicity expressly reserves the right to modify, supplement, and/or amend its responses to the Interrogatories as additional information is made available during discovery in this Proceeding.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify by name and date of first use in commerce, each product or service which INSIGHT is used, has been used, is intended to be used, or is associated with. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 1:

Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from U.S. Trademark Application Serial No. 86/533,567 (“the INSIGHT application”), documents relating to which are available at:

http://tsdr.uspto.gov/#caseNumber=86533567&caseType=SERIAL_NO&searchType=statusSearch.

Additional information responsive to this Interrogatory can be derived from:

<https://www.symplicity.com/products/insight.html>.

AMENDED RESPONSE TO INTERROGATORY NO. 1:

Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from U.S. Trademark Application Serial No. 86/533,567 (“the INSIGHT application”), documents relating to which are available at:

http://tsdr.uspto.gov/#caseNumber=86533567&caseType=SERIAL_NO&searchType=statusSearch.

Additional information responsive to this Interrogatory can be derived from:

<https://www.symplicity.com/products/insight.html>.

Products or services include:

1. Insight Advising. On information and belief, date of first use was in or about December, 2010. *See, e.g.*, SYMP000038-SYMP000039; SYMP000042-SYMP000045; SYMP000068-SYMP000090; SYMP000214-SYMP000215.
2. Insight Early Alert. On information and belief, date of first use was in or about December, 2010. *See, e.g.*, SYMP000040-SYMP000041; SYMP000050-SYMP000051; SYMP000054-SYMP000055; SYMP000115-SYMP000144; SYMP000159-SYMP000211; SYMP000216-SYMP000217.
3. Insight Athletics. On information and belief, date of first use was in or about December, 2010. *See, e.g.*, SYMP000046-SYMP000047; SYMP000091-SYMP000114.
4. Insight Counseling. On information and belief, date of first use was in or about December, 2010. *See, e.g.*, SYMP000048-SYMP000049.
5. Insight. On information and belief, date of first use was in or about December, 2010. *See, e.g.*, SYMP000052-SYMP000053; SYMP000056-SYMP000057.
6. Kiosk. On information and belief, date of first use was in or about December, 2010. *See, e.g.*, SYMP000060-SYMP000067.

INTERROGATORY NO. 2:

For each product or service identified in response to Interrogatory No. 1, describe the channels of distribution and/or intended channels of distribution. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 2:

Subject to and without waiver of the foregoing General Objections, Symplicity utilizes salespeople to contact potential purchasers of its products, as well as its website, available at:

<https://www.symplicity.com/products/insight.html>

AMENDED RESPONSE TO INTERROGATORY NO. 2:

Subject to and without waiver of the foregoing General Objections, Symplicity utilizes salespeople to contact potential purchasers of its products, as well as its website, available at:

<https://www.symplicity.com/products/insight.html>

In addition, Symplicity utilizes distributors or resellers who sell Insight products such as, for example, Genentech and Bico Savant. *See, e.g.,* SYMP000220-SYMP000221. *See also* <http://bicosavant.com/symplicity/index.html>.

INTERROGATORY NO. 3:

For each product or service identified in response to Interrogatory No. 1, describe the geographic scope of all former, current, and contemplated use in commerce. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 3:

Subject to and without waiver of the foregoing General Objections, geographic scope is throughout the United States, as well as internationally.

AMENDED RESPONSE TO INTERROGATORY NO. 3:

Subject to and without waiver of the foregoing General Objections, geographic scope is throughout the United States, as well as internationally. *See, e.g.,* SYMP000212-SYMP000213.

INTERROGATORY NO. 4:

For each product or service identified in response to Interrogatory No. 1, identify by name and address all Educational Institutions using each product or service, the date of first use of each product or service by the institution, and the current status of the use of each product or service by the institution. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 4:

Symplicity objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and/or seeks information that is neither irrelevant nor reasonably calculated to lead

to the discovery of admissible evidence. Symplicity also objects to this Interrogatory to the extent it seeks private, confidential, secret, proprietary and/or commercially-sensitive information of any third-party to whom Symplicity owes a duty of confidentiality. Subject to and without waiver of the foregoing Specific and General Objections, Symplicity will produce representative documents sufficient to identify the Educational Institutions using Symplicity's INSIGHT products and services.

AMENDED RESPONSE TO INTERROGATORY NO. 4:

Symplicity objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and/or seeks information that is neither irrelevant nor reasonably calculated to lead to the discovery of admissible evidence. Symplicity also objects to this Interrogatory to the extent it seeks private, confidential, secret, proprietary and/or commercially-sensitive information of any third-party to whom Symplicity owes a duty of confidentiality. Subject to and without waiver of the foregoing Specific and General Objections, Symplicity will produce representative documents sufficient to identify the Educational Institutions using Symplicity's INSIGHT products and services.

Information responsive to this Interrogatory can be determined by examining documents that have been produced by Symplicity, including SYMP000212-SYMP000213; SYMP000218-SYMP000221.

INTERROGATORY NO. 5:

For each product or service identified in response to Interrogatory No. 1, identify the media or medium used to communicate INSIGHT to the public in relation to each product or service. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 5:

Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from:

<https://www.symplicity.com/products/insight.html>.

AMENDED RESPONSE TO INTERROGATORY NO. 5:

Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from:

<https://www.symplicity.com/products/insight.html>.

In addition to the foregoing, product-specific marketing materials are used to convey information regarding INSIGHT products and services. *See, e.g.*, SYMP000038-SYMP000047; SYMP000050-SYMP000057; SYMP000060-SYMP000144; SYMP000159-SYMP000211; SYMP000214-SYMP000217.

INTERROGATORY NO. 6:

For each product or service identified in response to Interrogatory No. 1, describe all analyses performed of market penetration and market awareness of the same. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 6:

Symplicity objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and/or seeks information that is neither irrelevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing Specific and General Objections, Symplicity is not aware of any analyses “performed of market penetration and market awareness.”

INTERROGATORY NO. 7:

For each product or service identified in response to Interrogatory No. 1, identify all websites (by hyperlink) advertising or marketing each product or service, the date the website was first accessible to the public, the duration of accessibility by the public of the website, and the geographic scope of the website's user base. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 7:

Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from:

<https://www.symplicity.com/products/insight.html>.

AMENDED RESPONSE TO INTERROGATORY NO. 7:

Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from:

<https://www.symplicity.com/products/insight.html>.

In addition to the above-identified website, Symplicity also identifies www.symplicity.com. On information and belief, these two websites have been continuously accessible to the public at least as early as January 1, 2014, with a user base located within the United States as well as internationally. *See, e.g.*, SYMP000145-SYMP000158.

INTERROGATORY NO. 8:

Identify by name, title, role, and address any individual who may have knowledge of creation of INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 8:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of "any individual." Subject to and without waiver of the foregoing Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity's undersigned counsel.

William Gerety
CEO
Syplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Victoria Chapa
Marketing Manager
Syplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Janet Sun
Product Manager
Syplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Head of Sales
Syplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

AMENDED RESPONSE TO INTERROGATORY NO. 8:

Syplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing Specific and General Objections, Syplicity identifies the following individuals, who shall be contacted only through Syplicity’s undersigned counsel.

William Gerety
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1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Victoria Chapa
Marketing Manager

Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Janet Sun
Head of Product
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Director of Customer Support
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

SECOND AMENDED RESPONSE TO INTERROGATORY NO. 8:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity’s undersigned counsel.

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1560 Wilson Boulevard, Suite 550
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Janet Sun
Head of Product
Symplicity Corporation
1560 Wilson Boulevard, Suite 550

Arlington, VA 2209

Craig Czubati
Director of Customer Support
Syplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

In addition, Syplicity identifies Ariel Friedler, founder and former CEO of Syplicity Corporation.

INTERROGATORY NO. 9:

Identify by name, title, role, and address any individual who may have knowledge of the use in commerce of INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 9:

Syplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing Specific and General Objections, Syplicity identifies the following individuals, who shall be contacted only through Syplicity’s undersigned counsel.

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1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

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Janet Sun

Product Manager
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Head of Sales
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

AMENDED RESPONSE TO INTERROGATORY NO. 9:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity’s undersigned counsel.

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1560 Wilson Boulevard, Suite 550
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Arlington, VA 2209

Craig Czubati
Director of Customer Support

Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

SECOND AMENDED RESPONSE TO INTERROGATORY NO. 9:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity’s undersigned counsel.

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Head of Product
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Director of Customer Support
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

In addition, Symplicity identifies Ariel Friedler, founder and former CEO of Symplicity Corporation.

INTERROGATORY NO. 10:

Identify by name, title, role, and address any individual who may have knowledge of any license or use agreements entered into by Symplicity relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 10:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity’s undersigned counsel.

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Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

AMENDED RESPONSE TO INTERROGATORY NO. 10:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity’s undersigned counsel.

William Gerety
CEO
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Victoria Chapa
Marketing Manager
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Janet Sun
Head of Product
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Director of Customer Support
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

SECOND AMENDED RESPONSE TO INTERROGATORY NO. 10:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity’s undersigned counsel.

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Arlington, VA 2209

Janet Sun
Head of Product
Syplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Director of Customer Support
Syplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

In addition, Syplicity identifies Ariel Friedler, founder and former CEO of Syplicity Corporation.

INTERROGATORY NO. 11:

Identify by name, title, role, and address any individual who may have knowledge of any common law trademark rights relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 11:

Syplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing

Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity's undersigned counsel.

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Janet Sun
Product Manager
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Head of Sales
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

AMENDED RESPONSE TO INTERROGATORY NO. 11:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of "any individual." Subject to and without waiver of the foregoing Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity's undersigned counsel.

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Simplicity Corporation
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Craig Czubati
Director of Customer Support
Simplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

SECOND AMENDED RESPONSE TO INTERROGATORY NO. 11:

Simplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing Specific and General Objections, Simplicity identifies the following individuals, who shall be contacted only through Simplicity’s undersigned counsel.

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Director of Customer Support
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

In addition, Symplicity identifies Ariel Friedler, founder and former CEO of Symplicity Corporation.

INTERROGATORY NO. 12:

Identify, by date, parties involved, and description, all oral or written communications relating to SHINE INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 12:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications.” Subject to the foregoing Specific and General Objections, Symplicity is not aware of any communications relating to SHINE INSIGHT outside of this proceeding, and Symplicity will produce representative, non-privileged documents sufficient to identify communications relating to SHINE INSIGHT to the extent such documents are determined to exist after a reasonable search.

INTERROGATORY NO. 13:

Identify, by date, parties involved, and description, all oral or written communications relating to CONNECT INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 13:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications.” Subject to the foregoing Specific and General Objections, Symplicity is not aware of any communications relating to CONNECT INSIGHT other than communications with the USPTO in connection with the INSIGHT application. Such communications are available at:

http://tsdr.uspto.gov/#caseNumber=86533567&caseType=SERIAL_NO&searchType=statusSearch.

AMENDED RESPONSE TO INTERROGATORY NO. 13:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications.” Subject to the foregoing Specific and General Objections, Symplicity is not aware of any communications relating to CONNECT INSIGHT other than communications with the USPTO in connection with the INSIGHT application. Such communications are available at:

http://tsdr.uspto.gov/#caseNumber=86533567&caseType=SERIAL_NO&searchType=statusSearch. *See, e.g.*, SYMP000001-SYMP000036.

INTERROGATORY NO. 14:

Identify, by date, parties involved, and description, all oral or written communications relating to YOUTH INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 14:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications.” Subject to the foregoing Specific and General Objections, Symplicity is not aware of any communications relating to YOUTH INSIGHT other than communications with the USPTO in connection with the INSIGHT application. Such communications are available at:

http://tsdr.uspto.gov/#caseNumber=86533567&caseType=SERIAL_NO&searchType=statusSearch.

AMENDED RESPONSE TO INTERROGATORY NO. 14:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications.” Subject to the foregoing Specific and General Objections, Symplicity is not aware of any communications relating to YOUTH INSIGHT other than communications with the USPTO in connection with the INSIGHT application. Such communications are available at:

http://tsdr.uspto.gov/#caseNumber=86533567&caseType=SERIAL_NO&searchType=statusSearch. *See, e.g.*, SYMP000001-SYMP000036.

INTERROGATORY NO. 15:

Identify, by date, parties involved, and description, all oral or written communications relating to any threatened or actual disputes relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 15:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications” as well as information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing Specific and General Objections, Symplicity will produce representative, non-privileged documents sufficient to identify such communications to the extent such documents are determined to exist after a reasonable search.

AMENDED RESPONSE TO INTERROGATORY NO. 15:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications” as well as information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing Specific and General Objections, Symplicity will produce representative, non-privileged documents sufficient to identify such communications to the extent such documents are determined to exist after a reasonable search. Information responsive to this Interrogatory can be determined by examining documents that have been produced by Symplicity, including SYMP001146-SYMP001293.

INTERROGATORY NO. 16:

Explain the difference between educational institutions, colleges, and universities as enumerated in paragraph 2 of the Notice.

RESPONSE TO INTERROGATORY NO. 16:

Subject to the foregoing General Objections, “colleges” typically encompass institutions of higher learning, especially those providing a general or liberal arts education rather than technical or professional training, and which may be a constituent unit of a university, as well as community colleges. “Universities” typically encompass institutions of learning of the highest level, often having a college of liberal arts and a program of graduate studies, along with professional schools, such as law, medicine, and engineering. “Educational institutions” encompass both colleges and universities, as well as other educational institutions.

Dated: New York, New York
June 8, 2016

Respectfully submitted,

CROWELL & MORING LLP

By: /Sean E. Jackson/
Lora A. Moffatt
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*Attorneys for Opposer
Symplicity Corporation*

VERIFICATION

I, Samuel R. Ramer, hereby certify that the facts set forth in the foregoing Symplicity's Second Amended Responses to Acelero's First Set of Interrogatories (No. 1-16) are true to the best of my knowledge, based in part on information provided to me by others and on documents being produced by Opposer, Symplicity Corporation ("Symplicity"). I further certify that I am authorized to sign this Verification on behalf of Symplicity. I understand that if the foregoing statements made by me are willfully false, I am subject to punishment.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 8, 2016



Samuel R. Ramer
General Counsel
Vice President of Government Relations
Symplicity Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of June, 2016, a true and correct copy of the foregoing **SYMPPLICITY'S SECOND AMENDED RESPONSES TO ACELERO'S FIRST SET OF INTERROGATORIES (NO. 1-16)** was caused to be served on counsel for the Applicant by electronic mail to:

Robert J. Koch, Esq.
Stephanie R. Amoroso, Esq.
Javier J. Ramos, Esq.
MILBANK, TWEED, HADLEY & McCLOY, LLP
1850 K Street N.W., Suite 1100
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/Sean E. Jackson/
Sean E. Jackson

EXHIBIT 12

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

In the Matter of:
Application Serial No. 86/257,568
For the Mark: SHINE INSIGHT
Published in the *Official Gazette (Trademarks)* on April 28, 2015
Opposition filed on August 26, 2015

SYMPPLICITY CORP.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91223510
)	
ACELERO LEARNING DATA AND)	
TECHNICAL ASSISTANCE, INC.,)	
)	
Applicant.)	

**APPLICANT’S RESPONSES AND OBJECTIONS TO
SYMPPLICITY’S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS**

Applicant, through counsel, submits the following responses to Opposer’s First Set of Requests for Production of Documents and Things. Unless otherwise noted, Applicant will attempt to complete production responsive to this set of Requests by July 22, 2016.

GENERAL OBJECTIONS

1. Applicant objects to each and every definition, instruction and Request to the extent that it seeks to impose any obligation beyond those set forth in the Federal Rules of Civil Procedure and the Trademark Board Manual of Procedure (“TBMP”). Subject to and without waiving this objection, Applicant will respond to the request only as required by these rules.
2. Applicant objects to each and every Request to the extent that it appears to require

production of information, documents or things that do not exist, or that are outside the possession, custody, or control of Applicant.

3. Applicant objects to each and every Request to the extent that it appears to require production of information, documents or things that are subject to a preexisting protective order and/or confidentiality obligations to third parties.

4. Applicant objects to each and every Request as uncertain, overbroad, unduly burdensome, and oppressive to the extent that it seeks to impose on Applicant the obligation to ascertain facts that are not known to Applicant.

5. Applicant objects to each and every request to the extent that it seeks to elicit information that is not relevant to the subject matter of this action, which is not proportional to the needs of the case, or which is not reasonably calculated to lead to the discovery of admissible evidence.

6. Applicant objects to each and every Request to the extent it is vague, ambiguous, and unduly burdensome in that it does not clearly define what information is requested or because it is not reasonably limited in scope and time.

7. Applicant objects to each and every Request to the extent it seeks production of information, documents or things concerning personal or privacy interests of individuals.

8. Applicant objects to each and every Request to the extent it seeks production of information, documents or things, the disclosure of which is prohibited by the laws of any applicable domestic or foreign jurisdiction.

9. Applicant objects to each and every Request to the extent that it seeks production of information, documents or things that are protected under the attorney-client privilege and/or the attorney work-product doctrine, or which are otherwise immune from discovery. To the

extent that an individual Request may be construed as seeking privileged information, Applicant claims that privilege and invokes such protection. Subject to and without waiving this objection, Applicant will provide relevant, non-privileged information, documents and things responsive to those Requests, which may include redactions as appropriate.

10. Applicant objects to any Request which purports to require the production of information, documents or things which are considered proprietary, confidential or trade secret information. To the extent any such material is responsive to Symplicity's Requests, it will be produced only pursuant to the terms of the Board's Standard Protective Order.

11. Applicant objects to the definition of "Applicant" to the extent such definition includes "any parent and predecessors, as well as any divisions, branches, subsidiaries, affiliates, related companies or companies sharing common ownership or control" of Acelero Learning Data and Technical Assistance, Inc., including entities which are not recorded owners of the SHINE INSIGHT application. Applicant further objects to the definition of "Applicant" to the extent that it requires production of information, documents and things within the knowledge and possession of any of Applicant's past and present: attorneys, agents, accountants, investigators, employees and anyone acting on Applicant's behalf or their behalf, as overbroad and beyond the requirements of the Federal Rules. These responses are made only on behalf of Acelero Learning Data and Technical Assistance, Inc. and Shine Early Learning, Inc., and will only include information reasonably available to the same.

12. Applicant objects to the definition of "control" to the extent it exceeds the scope of control deemed by applicable law.

13. Applicant objects to the definition of "possession, custody, or control" to the extent that it calls for Applicant obtaining possession of any document or thing from a third party

to this Opposition.

14. Applicant objects to the definition of “describe” to the extent that it calls for production of documents or things outside the scope of Fed. R. Civ. P. 34. Symplicity’s request for additional information is more appropriately propounded on Applicant via interrogatories or requests for admission.

15. Applicant objects to the definition of “identify” to the extent that it calls for production of documents or things outside the scope of Fed. R. Civ. P. 34. Symplicity’s request for additional information is more appropriately propounded on Applicant via interrogatories or requests for admission.

16. Applicant objects to the reference to a “Production Protocol” in instruction no. 11, to the extent that such a protocol does not exist. Applicant is willing to meet and confer on a production protocol if necessary during the course of this Opposition. Further, Applicant objects to instruction nos. 10 and 12 as unduly burdensome in view of Symplicity’s discovery procedure to date whereby documents were not produced as kept in the usual course of business or in their original electronic format. Applicant is willing to agree to particular modes of production in a production protocol if adhered to by both parties.

17. Applicant objects to the instructions for mode of production and identification of privileged documents to the extent such instructions exceed the requirements of applicable law or any agreement the parties may reach regarding the production of documents or electronically stored information.

18. Applicant’s collection and review of documents in response to Symplicity’s Requests is ongoing and Applicant reserves the right to supplement these responses with any appropriate additional objections or information, documents and things as deemed appropriate.

19. Finally, to the extent that responses are provided herein, they represent an effort to expedite discovery in this action and are not an admission by Applicant of the relevancy or materiality of the information requested.

Additional objections to specific requests are set forth below.

SPECIFIC RESPONSES AND OBJECTIONS TO REQUESTS FOR PRODUCTION

REQUEST NO. 1:

Documents and things sufficient to provide complete and comprehensive information pertaining to the nature of the business conducted or services rendered, and/or expected to be conducted or rendered, by Applicant in connection with the SHINE INSIGHT mark, including a description of the goods and services sold or offered for sale, or expected to be sold or offered for sale, in connection with the mark, the locations where such activities are or have been conducted or are expected to be conducted and the time period during which such activities have been conducted or are expected to be conducted at each location.

RESPONSE TO REQUEST NO. 1:

Applicant objects to this Request to the extent it is vague, ambiguous, and unduly burdensome in that it is not reasonably limited in time. Applicant will not produce any documents created before January 2014.

Applicant objects to this Request to the extent it is vague, ambiguous, and unduly burdensome in that it is not reasonably limited in scope. Specifically, the language “information pertaining to the nature of the business conducted or services rendered, and/or expected to be conducted or rendered, by Applicant in connection with the SHINE INSIGHT mark” is overly

broad. Applicant will produce documents and things responsive to this request which expressly reference SHINE INSIGHT.

Applicant objects to the language “a description of the goods and services sold or offered for sale, or expected to be sold or offered for sale, in connection with the mark” to the extent that it requests information outside the scope of Fed. R. Civ. P. 34.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant’s possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 2:

Documents and things sufficient to demonstrate the manner in which Applicant has used and displayed the SHINE INSIGHT mark, including representative specimens and labels, tags and containers reflecting each different type of use and the time periods and locations where the mark has been in use for each different type of product or service at the time periods during which said items have been in use.

RESPONSE TO REQUEST NO. 2:

Applicant objects to the language “each different type of use” as vague and ambiguous. Applicant interprets this phrase to mean “each good or service associated with SHINE INSIGHT.”

Subject to and without waiver of the general and the specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents

are in Applicant's possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 3:

Documents and things sufficient to show the manner in which Applicant intends to use the SHINE INSIGHT mark in the future including representative specimens and labels, tags and containers reflecting each different type of intended use.

RESPONSE TO REQUEST NO. 3:

Applicant objects to this Request to the extent it is vague, ambiguous, and unduly burdensome in that it is not reasonably limited in time. Applicant interprets "the future" to mean from today until December 31, 2016.

Applicant objects to the language "each different type of intended use" as vague and ambiguous. Applicant interprets this phrase to mean "each good or service intended to be associated with SHINE INSIGHT."

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant's possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 4:

Documents and things sufficient to provide complete and comprehensive information regarding all use, known to Applicant, by any third party of the SHINE INSIGHT mark or variations thereon in connection with any product or service.

RESPONSE TO REQUEST NO. 4:

Applicant objects to this Request because the phrase “complete and comprehensive information” is vague and ambiguous. Applicant disregards this language.

Applicant objects to this Request to the extent it is unduly burdensome in that it is not reasonably limited in scope by requesting documents and things “regarding all use, known to Applicant, by any third party.” Symplicity has not demonstrated why the burden and expense on Applicant of discovering and producing such information does not outweigh its likely benefit.

Applicant objects to this Request because the phrase “the SHINE INSIGHT mark or variations thereon” is vague and ambiguous. Applicant will only search for and produce responsive documents expressly referencing SHINE INSIGHT.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant’s possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 5:

Documents and things sufficient to provide complete and comprehensive information regarding all use, known to Applicant, by any third party of the SHINE INSIGHT mark or variations thereon to describe any product or service or in any other descriptive manner.

RESPONSE TO REQUEST NO. 5:

Applicant objects to this Request because the phrase “complete and comprehensive information” is vague and ambiguous. Applicant disregards this language.

Applicant objects to this Request to the extent it is overbroad and unduly burdensome in that it is not reasonably limited in scope by requesting documents and things “regarding all use, known to Applicant, by any third party.” Symplicity has not demonstrated why the burden and expense on Applicant of discovering and producing such information relating to “all use” does not outweigh its likely benefit.

Applicant objects to this Request because the phrase “the SHINE INSIGHT mark or variations thereon” is vague and ambiguous. Applicant will only search for and produce responsive documents expressly referencing SHINE INSIGHT.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant’s possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 6:

Documents and things sufficient to provide complete and comprehensive information regarding all use, known to Applicant, by Opposer of the INSIGHT mark and all knowledge of Applicant pertaining to Opposer and the business Opposer conducts.

RESPONSE TO REQUEST NO. 6:

Applicant objects to this Request because the phrase “complete and comprehensive information” is vague and ambiguous. Applicant disregards this language.

Applicant objects to this Request to the extent it is overbroad and unduly burdensome in that it is not reasonably limited in scope by requesting documents and things “regarding all use, known to Applicant, by Opposer.” Symplicity has not demonstrated why the burden and

expense on Applicant of discovering and producing such information relating to “all use” does not outweigh its likely benefit.

Applicant objects to this Request to the extent it is vague, ambiguous, overbroad, and unduly burdensome by requesting documents and things regarding “all knowledge of Applicant pertaining to Opposer.” Symplicity has not demonstrated why the burden and expense on Applicant of discovering and producing such information relating to “all knowledge” does not outweigh its likely benefit.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant’s possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 7:

Documents and things sufficient to provide complete and comprehensive information pertaining to ownership of Applicant’s SHINE INSIGHT Application.

RESPONSE TO REQUEST NO. 7:

Applicant objects to this Request because the phrase “to provide complete and comprehensive information” is vague and ambiguous. Applicant disregards this language.

Subject to and without waiver of the general and the specific objections, Applicant will produce non-privileged documents sufficient to establish ownership of the SHINE INSIGHT application, if any such documents exist, to the extent such documents are in Applicant’s possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 8:

The file histories of all applications filed by Applicant, or on behalf of Applicant, to register the SHINE INSIGHT mark, or variations thereon, as a trademark in the United States Patent and Trademark Office.

RESPONSE TO REQUEST NO. 8:

Applicant objects to this Request because the term “file histories” is vague and ambiguous. Applicant interprets “file histories” to mean publicly available documents relating to a particular trademark application accessible from the United States Patent and Trademark Office.

Applicant objects to this Request because the phrase “the SHINE INSIGHT mark or variations thereon” is vague and ambiguous. Applicant will only search for and produce responsive documents expressly referencing SHINE INSIGHT.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant’s possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 9:

All documents and things pertaining to Applicant’s SHINE INSIGHT Application.

RESPONSE TO REQUEST NO. 9:

Applicant objects to this Request to the extent it is overbroad and unduly burdensome in that it is not reasonably limited in scope by requesting “[a]ll documents and things pertaining to.”

Symplicity has not demonstrated why the burden and expense on Applicant of discovering and producing such documents and things does not outweigh its likely benefit.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant's possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 10:

Documents and things sufficient to reflect the corporate organization of Applicant, including the place and date of incorporation or formation and the legal structure of the company (e.g. partnership, corporation) at the time of incorporation or incorporation, any changes in the of the name of the company or its legal status, the location of its corporate offices and the identity of its officers and directors.

RESPONSE TO REQUEST NO. 10:

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant's possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 11:

Documents and things sufficient to provide complete and comprehensive information pertaining to the decision by Applicant to adopt the SHINE INSIGHT mark, the other terms or

marks under consideration, the reasons why those other terms or marks were not chosen and the SHINE INSIGHT mark was chosen, and the individuals involved in the decision process.

RESPONSE TO REQUEST NO. 11:

Applicant objects to this Request because the phrase “to provide complete and comprehensive information” is vague and ambiguous. Applicant disregards this language.

Applicant objects to this Request to the extent that it calls for the production of information, documents, or things which are not relevant to this Opposition.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant’s possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 12:

Documents and things sufficient to provide complete and comprehensive information pertaining to the meaning or significance of the SHINE INSIGHT mark.

RESPONSE TO REQUEST NO. 12:

Applicant objects to this Request because the phrase “to provide complete and comprehensive information” is vague and ambiguous.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant’s possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 13:

Documents and things sufficient to provide complete and comprehensive information pertaining to the nature of each different product or service sold or offered for sale, or expected to be sold or offered for sale, by Applicant in connection with the SHINE INSIGHT mark, the time periods during which each product or service was sold or is expected to be sold, and the manner in which the SHINE INSIGHT mark is or was used and displayed, or is expected to be used and displayed.

RESPONSE TO REQUEST NO. 13:

Applicant objects to this Request because the phrase “to provide complete and comprehensive information” is vague and ambiguous.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant’s possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 14:

Documents and things sufficient to provide complete and comprehensive information pertaining to Applicant’s knowledge of Opposer, Opposer’s use of the INSIGHT mark, including the dates on which and the manner by which Applicant became so aware. This request includes documents pertaining to any research or investigation Applicant may have conducted or commenced pertaining thereto.

RESPONSE TO REQUEST NO. 14:

Applicant objects to this Request because the phrase “to provide complete and comprehensive information” is vague and ambiguous.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant’s possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 15:

Documents and things sufficient to identify and describe the circumstances under which the end user purchases SHINE INSIGHT products or services in commerce, including the location of such purchases (including online via the Internet).

RESPONSE TO REQUEST NO. 15:

Applicant objects to this Request because the phrase “location of such purchases” is vague and ambiguous. Applicant interprets this phrase to mean “channels of trade.”

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant’s possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 16:

Documents and things sufficient to identify and otherwise describe the distributors or retailers of the SHINE INSIGHT products or services.

RESPONSE TO REQUEST NO. 16:

Applicant objects to this Request because the phrase “to identify and otherwise describe” is vague and ambiguous. Applicant interprets this phrase to mean “to identify.”

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant’s possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 17:

Documents and things sufficient to provide complete and comprehensive information pertaining to the channels of trade in which Applicant has sold or provided, or plans to sell or provide, goods and services in connection with the SHINE INSIGHT mark.

RESPONSE TO REQUEST NO. 17:

Applicant objects to this Request because the phrase “to provide complete and comprehensive information” is vague and ambiguous.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant’s possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 18:

Documents and things sufficient to provide complete and comprehensive information pertaining to the geographic areas in which Applicant has sold or provided, or plans to sell or provide, goods and services in connection with the SHINE INSIGHT mark.

RESPONSE TO REQUEST NO. 18:

Applicant objects to this Request because the phrase “to provide complete and comprehensive information” is vague and ambiguous.

Applicant objects to this Request to the extent it is vague, ambiguous, overbroad, and unduly burdensome in that it is not reasonably limited in geographic scope by requesting documents and things “pertaining to the geographic areas.” Applicant interprets the phrase to mean “pertaining to the geographic areas in the United States.”

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant’s possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 19:

Documents and things sufficient to provide complete and comprehensive information pertaining to the geographical place of residence of purchasers or users of Applicant’s goods and services sold or provided in connection with the SHINE INSIGHT mark.

RESPONSE TO REQUEST NO. 19:

Applicant objects to this Request because the phrase “to provide complete and comprehensive information” is vague and ambiguous.

Applicant objects to this Request to the extent it is vague, ambiguous, overbroad, and unduly burdensome in that it is not reasonably limited in geographic scope by requesting documents and things “pertaining to the geographic place of residence.” Applicant interprets the phrase to mean “pertaining to the geographic place of residence within the United States.”

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant's possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 20:

Documents and things sufficient to provide complete and comprehensive information pertaining to the use by Applicant of the SHINE INSIGHT mark, including any use of the term "Shine Insight," from the date of first use to the present.

RESPONSE TO REQUEST NO. 20:

Applicant objects to this Request because the phrase "to provide complete and comprehensive information" is vague and ambiguous.

Applicant objects to this Request because the phrase "the date of first use" is vague and ambiguous. Applicant interprets the phrase to mean "the date of first use of SHINE INSIGHT by Applicant in commerce."

Applicant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome in that it is not reasonably limited in scope by requesting documents and things "pertaining to ... any use."

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant's possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 21:

Documents and things sufficient to provide complete and comprehensive information pertaining to Applicant's first use of the SHINE INSIGHT mark in commerce in connection with:

- a) each of the goods or services listed in Applicant's SHINE INSIGHT Application;
- b) each other different product or service (if any); and
- c) any signage or packaging in stores, other business locations, or on any websites.

RESPONSE TO REQUEST NO. 21:

Applicant objects to this Request because the phrase "to provide complete and comprehensive information" is vague and ambiguous.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant's possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 22:

Documents and things sufficient to provide complete and comprehensive information pertaining to each different type of marketing, advertising and promotional activity engaged in by Applicant in connection with marketing, advertising and promotion of products and services under the SHINE INSIGHT mark in commerce, including documents and things that pertain to the geographic areas where the marketing, advertising and promotional materials have been distributed, broadcast or otherwise disseminated, and the identification of any agencies or consultants involved in the creating of the marketing, advertising and promotional materials.

RESPONSE TO REQUEST NO. 22:

Applicant objects to this Request because the phrase “to provide complete and comprehensive information” is vague and ambiguous.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant’s possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 23:

Representative specimens of advertising and promotional materials (including video or audio tapes and website promotions), brochures, pamphlets, catalogs, sales manuals, promotional material or other material used or planned to be used by Applicant to promote the goods and services under the SHINE INSIGHT mark in commerce, so as to provide a comprehensive and complete representation of said advertising and promotional activities throughout the period in which such advertising and promotion has taken place

RESPONSE TO REQUEST NO. 23:

Applicant objects to this Request because the phrase “to provide a comprehensive and complete representation” is vague and ambiguous.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant’s possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 24:

Documents and things sufficient to provide complete and comprehensive information pertaining to any agreement to which Applicant is a party that pertains to the right to own, use, franchise, license or transfer the SHINE INSIGHT mark.

RESPONSE TO REQUEST NO. 24:

Applicant objects to this Request because the phrase “to provide a comprehensive and complete representation” is vague and ambiguous.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents that are not subject to any third-party confidentiality obligations, if any such documents exist, to the extent such documents are in Applicant’s possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 25:

Documents and things sufficient to provide complete and comprehensive information pertaining to any instance in which anyone has expressed confusion or mistake or has made inquiries or comments regarding the possible relationship or business affiliation between Applicant or Applicant’s use of the SHINE INSIGHT mark, on the one hand, and Opposer or Opposer’s business or INSIGHT mark, on the other hand.

RESPONSE TO REQUEST NO. 25:

Applicant objects to this Request because the phrase “to provide a comprehensive and complete representation” is vague and ambiguous.

Applicant objects to this Request as overbroad, unduly burdensome, and oppressive to the extent that it seeks to impose on Applicant the obligation to produce information, documents or things that are not known to Applicant.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant's possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 26:

Documents and things sufficient to provide complete and comprehensive information pertaining to any instance in which a person has referred to or inquired or commented about the similarity between Opposer's use of the INSIGHT mark and Applicant's use of the SHINE INSIGHT mark, or any supposed relationship between Applicant and Opposer.

RESPONSE TO REQUEST NO. 26:

Applicant objects to this Request because the phrase "to provide a comprehensive and complete representation" is vague and ambiguous.

Applicant objects to this Request as overbroad, unduly burdensome, and oppressive to the extent that it seeks to impose on Applicant the obligation to produce information, documents or things that are not known to Applicant.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant's possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 27:

Documents and things sufficient to provide complete and comprehensive information pertaining to any inquiry, investigation, search (including trademark search), opinion or determination by or on behalf of Applicant as to the availability of the SHINE INSIGHT mark, or any variations thereof, for use or registration in any service or product area or the existence of any third party use or registration of any name or mark incorporating the term Insight or variations thereon made: a) prior to the adoption of the SHINE INSIGHT mark; and b) at any time thereafter, or the possible likelihood of confusion between the SHINE INSIGHT mark and any other mark.

RESPONSE TO REQUEST NO. 27:

Applicant objects to this Request because the phrase “to provide a comprehensive and complete representation” is vague and ambiguous.

Applicant objects to this Request because the phrase “adoption” is vague and ambiguous.

Applicant objects to this Request because the phrase “the SHINE INSIGHT mark, or any variations thereof” is vague and ambiguous. Applicant will only search for and produce responsive documents expressly referencing SHINE INSIGHT.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such non-privileged documents exist, to the extent such documents are in Applicant’s possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 28:

Documents and things sufficient to provide complete and comprehensive information pertaining to any use of the term “Insight” or “Shine Insight” by any third party.

RESPONSE TO REQUEST NO. 28:

Applicant objects to this Request because the phrase “to provide a comprehensive and complete representation” is vague and ambiguous.

Applicant objects to this Request as overbroad, unduly burdensome, and oppressive to the extent that it seeks to impose on Applicant the obligation to produce information, documents or things that are not known to Applicant.

Applicant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome in that it is not reasonably limited in scope by requesting documents and things “pertaining to any use.”

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant’s possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 29:

Documents and things sufficient to provide complete and comprehensive information pertaining to any surveys regarding the likelihood of confusion between the SHINE INSIGHT mark and: a) any other mark; or b) Opposer’s INSIGHT mark.

RESPONSE TO REQUEST NO. 29:

Applicant objects to this Request because the phrase “to provide a comprehensive and complete representation” is vague and ambiguous.

Applicant objects to this Request as overbroad, unduly burdensome, and oppressive to the extent that it seeks to impose on Applicant the obligation to produce information, documents or things that are not known to Applicant.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such non-privileged documents exist, to the extent such documents are in Applicant's possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 30:

Documents and things sufficient to provide complete and comprehensive information pertaining to any efforts or plans by Applicant to license or franchise its rights in the SHINE INSIGHT mark, and all documents and things that pertain to any agreement to which Applicant is or has been a party that pertains to the right to own, use, license or franchise rights in the SHINE INSIGHT mark.

RESPONSE TO REQUEST NO. 30:

Applicant objects to this Request because the phrase "to provide a comprehensive and complete representation" is vague and ambiguous.

Applicant objects to this Request as overbroad and unduly burdensome because it is not reasonably limited in scope by requesting "all documents and things that pertain to any agreement." Symplicity has not demonstrated why the burden and expense on Applicant of discovering and producing such information does not outweigh its likely benefit. Applicant interprets this phrase to refer only to executed agreements.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents that are not subject to any third-party confidentiality obligations, if any such non-privileged documents exist, to the extent such documents are in Applicant's possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 31:

Documents and things sufficient to provide complete and comprehensive information pertaining to any instance in which:

- a) Applicant has objected to or has given its intention to object to any third party use or registration of any name or mark based on Applicant's claim of ownership of the SHINE INSIGHT mark, including but not limited to all forms of communications in which said objections were discussed, all legal actions pertaining thereto, and the results of such objection(s) (if any); and
- b) any third party has objected to or has given its intention to object to Applicant's use or registration of the SHINE INSIGHT mark, including but not limited to all forms of communications in which said objections were discussed, all legal actions pertaining thereto, and the results of such objection(s) (if any).

RESPONSE TO REQUEST NO. 31:

Applicant objects to this Request because the phrase "to provide a comprehensive and complete representation" is vague and ambiguous.

Applicant objects to this Request because the phrase "has given its intention to" is vague and ambiguous.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such non-privileged documents exist, to the extent such documents are in Applicant's possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 32:

Documents and things sufficient to provide complete and comprehensive information pertaining to any steps Applicant has taken to protect and enforce its claimed rights in the SHINE INSIGHT mark, including but not limited to Opposition proceedings, cease and desist letters, infringement suits and/or license negotiations.

RESPONSE TO REQUEST NO. 32:

Applicant objects to this Request because the phrase "to provide a comprehensive and complete representation" is vague and ambiguous.

Applicant objects to this Request because the phrase "pertaining to any steps" is vague and ambiguous.

Applicant objects to this Request because the phrase "its claimed rights" is vague and ambiguous.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such non-privileged documents exist that are not subject to third-party confidentiality obligations, to the extent such documents are in Applicant's possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 33:

Documents and things sufficient to provide complete and comprehensive information pertaining to Applicant's future plans with respect to the use the SHINE INSIGHT mark, or any variation thereof, including, but not limited to, all business plans, franchise plans, marketing plans or other documents relating to any new products or services to be offered.

RESPONSE TO REQUEST NO. 33:

Applicant objects to this Request because the phrase "to provide a comprehensive and complete representation" is vague and ambiguous.

Applicant objects to this Request because the phrase "the SHINE INSIGHT mark, or variation thereof" is vague and ambiguous. Applicant will only search for and produce responsive documents expressly referencing SHINE INSIGHT.

Applicant objects to this Request to the extent it is vague, ambiguous, and unduly burdensome in that it is not reasonably limited in time. Applicant interprets "the future" to mean from today until December 31, 2016.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant's possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 34:

Documents and things sufficient to provide complete and comprehensive information pertaining to any testimony expected to be given in this proceeding involving an expert witness.

RESPONSE TO REQUEST NO. 34:

Applicant objects to this Request because the phrase “to provide a comprehensive and complete representation” is vague and ambiguous.

Applicant objects to this Request because the phrase “the SHINE INSIGHT mark, or variation thereof” is vague and ambiguous. Applicant will only search for and produce responsive documents expressly referencing SHINE INSIGHT.

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant’s possession, custody, or control, and can be located after a reasonable search therefor, by the time required for such disclosures in the Federal Rules, the TBMP, and any orders issues during this Opposition.

REQUEST NO. 35:

Documents and things sufficient to reflect the annual sales in commerce by Applicant of each different type of goods and services offered for sale in connection with the SHINE INSIGHT mark, for each year in which such goods and services have been offered for sale.

RESPONSE TO REQUEST NO. 35:

Applicant objects to this Request to the extent it is vague, ambiguous, overbroad, and unduly burdensome in that it is not reasonably limited in geographic scope by requesting documents and things pertaining to sales “in commerce.” Applicant interprets the phrase to mean “in commerce within the United States.”

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents

are in Applicant's possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 36:

Documents and things sufficient to reflect the annual expenditure by Applicant in connection with the advertising and promotion of goods and services offered for sale by Applicant in commerce in connection with the SHINE INSIGHT mark, as broken down by the medium used and the type and nature of the advertising and promotional activity for each year in which such activity has taken place.

RESPONSE TO REQUEST NO. 36:

Applicant objects to this Request to the extent it is vague, ambiguous, overbroad, and unduly burdensome in that it is not reasonably limited in geographic scope by requesting documents and things pertaining to sales "in commerce." Applicant interprets the phrase to mean "in commerce within the United States."

Subject to and without waiver of the general and these specific objections, Applicant will produce non-privileged documents, if any such documents exist, to the extent such documents are in Applicant's possession, custody, or control, and can be located after a reasonable search therefor.

REQUEST NO. 37:

All documents and things Applicant intends to rely on or introduce into evidence at trial in this proceeding before the Trademark Trial and Appeal Board.

RESPONSE TO REQUEST NO. 37:

CERTIFICATE OF SERVICE

I, Javier Ramos, do hereby certify that on June 1, 2016, I caused to be served a true and correct copy of APPLICANT'S RESPONSES AND OBJECTIONS TO SYMPPLICITY'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS:

By E-Mail:

Lora A. Moffat, Esq.
Sean E. Jackson, Esq.
Crowell & Moring LLP
590 Madison Avenue
20th Floor
New York, NY 10022-2544
lmoffatt@crowell.com
sjackson@crowell.com
Attorneys for Opposer

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct. Executed on June 1, 2016.

/Javier J. Ramos/
Javier J. Ramos

EXHIBIT 13

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

In the Matter of Application No. 86-257,568 for
SHINE INSIGHT in International Class 9
Published for opposition in the Official Gazette of
April 28, 2015

Symplicity Corporation,

Opposer,

Opposition No.

v.

Acelero Learning Data and Technical Assistance, Inc.

Applicant.

NOTICE OF OPPOSITION

Opposer, Symplicity Corporation (“Opposer”), a Delaware corporation with offices at 1560 Wilson Boulevard, Suite 550, Arlington, VA 22209, United States, believes it will be damaged by registration of the mark SHINE INSIGHT as shown in Application Serial No. 86-257,568, hereby opposes the same.

As grounds for opposition, it is alleged that:

1. Applicant, Acelero Learning Data and Technical Assistance, Inc. (“Applicant”) is the owner of a United States Trademark Application No. 86-257,568 seeking to register SHINE INSIGHT for “Early education and child development curriculum and assessment computer software for administrators; student information archiving and analysis computer software for administrators; Early education and child development program compliance monitoring computer software for administrators (“SHINE INSIGHT Application”). The SHINE INSIGHT

Application was filed on April 21, 2014 as an Intent to Use application. No statement of use has been filed for the SHINE INSIGHT Application.

2. Opposer is the owner of rights in and to the name and mark INSIGHT and variations thereon (“INSIGHT Mark”), in the United States, in connection with the following class 42 services: Software as a service (SAAS) services featuring software for use by educational institutions, colleges, and universities for identifying and tracking at-risk students, case management, and creating a directory of tutors, counselors, assigned advisors, mentors, and campus offices; software as a service (SAAS) services featuring software for use by educational institutions, colleges, and universities for academic advising center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management; software as a service (SAAS) services featuring software for use by educational institutions, colleges, and universities for athletic advising office management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management; software as a service (SAAS) services featuring software for use by educational institutions, colleges, and universities for counseling center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, creating and maintaining a database of peer mentors, and centralized document management (“Simplicity Services”).

3. Opposer's rights in the INSIGHT Mark in connection with the Symplicity Services are prior and superior to any rights of Applicant in the mark sought to be registered in the opposed application.

4. Opposer's prior rights in the INSIGHT Mark, in part, are reflected by the prior use by of the INSIGHT Mark in commerce in connection with Symplicity Services and by its ownership of United States Trademark Application No. 86-533,567 for INSIGHT. Symplicity first used its INSIGHT mark in December of 2010.

5. Opposer filed its application for INSIGHT on February 12, 2015. On May 21, 2015, the United States Trademark Examiner for the INSIGHT Mark issued an office action whereby the Trademark Examiner issued a provisional Section 2(d) refusal citing the SHINE INSIGHT Application. If the SHINE INSIGHT Application matures into a registration, the Trademark Examiner may issue a 2(d) refusal against the INSIGHT Mark based on the SHINE INSIGHT Application.

6. Opposer will be damaged by the registration of the SHINE INSIGHT Application in that it may bar the registration of the INSIGHT Mark and 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 in violation of Section 2(d) of the United States Trademark Act of 1946 as amended ("Lanham Act") (15 U.S.C. §1052(d)) and otherwise will improperly give the appearance of exclusive statutory ownership rights in marks incorporating variations of the INSIGHT Mark to Applicant in derogation of the prior and superior rights of Opposer.

7. Registration, therefore, should be refused for the reasons set forth above.

WHEREFORE, Opposer requests that this opposition be sustained and that the SHINE INSIGHT Application be refused.

Opposer will submit payment with the online filing of the Notice, pursuant to 37 CFR §2.6(a)(17), in an amount totaling three hundred dollars (\$300.00) in payment of the requisite fee for filing this Notice of Opposition against the application in one class. Please charge any additional amounts to the undersigned Attorney's Deposit Account No. 05-1323.

Dated: New York, New York
August 26, 2015

Respectfully submitted,

CROWELL & MORING LLP

By: /Lora Moffatt/
Lora A. Moffatt, Esq.
Preetha Chakrabarti, Esq.
590 Madison Avenue
20th Floor
New York, New York 10022-2524

Attorneys for Opposer
Symplicity Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2015, the foregoing Notice of Opposition was served upon Applicant by depositing same with the U.S. Postal Service, first-class postage prepaid, addressed as follows:

Mr. Javier J. Ramos
Millbank Tweed Hadley & McCloy LLP
1850 K Street NW STE 1100
Washington, DC 20006
jramos@milbank.com

/Alison J. Field/
Alison J. Field

EXHIBIT 14



United States Patent and Trademark Office

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SHINE INSIGHT

Word Mark	SHINE INSIGHT
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Early education and child development curriculum and assessment computer software for administrators; student information archiving and analysis computer software for administrators; Early education and child development program compliance monitoring computer software for administrators
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	86257568
Filing Date	April 21, 2014
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	April 28, 2015
Owner	(APPLICANT) Acelero Learning Data and Technical Assistance, Inc. CORPORATION DELAWARE 6th Floor 63 West 125th Street New York NEW YORK 10027
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of	Javier J. Ramos

Record

Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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EXHIBIT 15

To: Symplicity Corporation (edocket@crowell.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86533567 - INSIGHT - 107363.30127
Sent: 5/21/2015 2:00:46 PM
Sent As: ECOM105@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
[Attachment - 7](#)
[Attachment - 8](#)
[Attachment - 9](#)
[Attachment - 10](#)
[Attachment - 11](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 86533567

MARK: INSIGHT

86533567

CORRESPONDENT ADDRESS:

LORA A. MOFFATT
CROWELL & MORING LLP
P.O. BOX 14300
WASHINGTON, DC 20044-4300

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

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APPLICANT: Symplicity Corporation

CORRESPONDENT'S REFERENCE/DOCKET NO :

107363.30127

CORRESPONDENT E-MAIL ADDRESS:

edocket@crowell.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 5/21/2015

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SUMMARY OF ISSUES that applicant must address:

- Section 2(d) Refusal- Likelihood of Confusion

SECTION 2(d) REFUSAL- LIKELIHOOD OF CONFUSION

Applicant has applied for the mark INSIGHT in International Class 42 for software as a service services featuring software for use by academic institutions for monitoring at-risk students and managing academic advising, athletic advising, and counseling offices.

Registration of the applied-for mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. **4134520 and 4676307**. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registrations.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). A determination of likelihood of confusion under Section 2(d) is made on a case-by case basis and the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) aid in this determination. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)). Not all the *du Pont* factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d at 1355, 98 USPQ2d at 1260; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods and/or services, and similarity of the trade channels of the goods and/or services. *See In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq.*

Similarity of the Marks

The applicant has applied for the mark INSIGHT. The mark in Reg. No. 4134520 is YOUTH INSIGHT, owned by Terben Incorporated. The mark in Reg. No. 4676307 is CONNECT INSIGHT, owned by McGraw-Hill Global Education Holdings, LLC. The registered marks and the applied-for mark are thus significantly similar in sound, appearance, and meaning.

In a likelihood of confusion determination, the marks in their entireties are compared for similarities in appearance, sound, connotation, and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b)-(b)(v).

When comparing marks, the test is not whether the marks can be distinguished in a side-by-side comparison, but rather whether the marks are sufficiently similar in their entireties that confusion as to the source of the goods and/or services offered under applicant's and registrant's marks is likely to result. *Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 1053, 103 USPQ2d 1435, 1440 (Fed. Cir. 2012); *Edom Labs., Inc. v. Lichter*, 102 USPQ2d 1546, 1551 (TTAB 2012); TMEP §1207.01(b). The focus is on the recollection of the average purchaser, who normally retains a general rather than specific impression of trademarks. *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975); TMEP §1207.01(b).

Here, all marks at issue feature the term "Insight." The applied-for mark consists entirely of the term, while the registered marks contain the term preceded by additional wording related to the subject matter of the services. Marks may be confusingly similar in appearance where similar terms or phrases appear in the compared marks and create a similar overall commercial impression. *See Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689, 690-91 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (finding COMMASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (finding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (finding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii). Here, the applied-for mark contains no additional matter to distinguish it from the cited marks.

In the case of Reg. No. 4134520, the additional matter in the mark is also disclaimed. Disclaimed matter that is descriptive of or generic for a party's goods and/or services is typically less significant or less dominant when comparing marks. *See In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat'l Data Corp.*, 753 F.2d at 1060, 224 USPQ at 752; TMEP §1207.01(b)(viii), (c)(ii). Thus, the dominant feature in creating a commercial impression of the mark is the term "Insight."

Therefore, the applied-for and cited marks all feature the wording "Insight," and are therefore confusingly similar.

Relatedness of the Services

The applicant's services are software as a service services featuring software for use by academic institutions for monitoring at-risk students and managing academic advising, athletic advising, and counseling office services, including tracking students, case management, and creating databases of student information, in Class 42. The registrants' services are as follows: for Reg. No. 4134520, software as a service services featuring software for aggregation of case management, educational, and health data on at-risk youths for use by individuals in the case management of care provision for those youths, in Class 42; for Reg. No. 4676307, providing a website featuring software for collecting data and creating reports for evaluation of student performance, in Class 42. As evidenced below, the services provided by each of the parties are closely related.

To determine relatedness, the services of the parties need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods [or services] in question are different from, and thus not related to, one another in kind, the same goods [or services] can be related in the mind of the consuming public as to the origin of the goods.”); TMEP §1207.01(a)(i). The respective services need only be “related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); *Gen. Mills Inc. v. Fage Dairy Processing Indus. SA*, 100 USPQ2d 1584, 1597 (TTAB 2011); TMEP §1207.01(a)(i).

With respect to applicant’s and registrants’ software services, the question of likelihood of confusion is determined based on the description of the services stated in the application and registration at issue, not on extrinsic evidence of actual use. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1323, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014) (quoting *Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)).

Here, all services at issue are related to providing access to software. Applicant’s software is used by academic institutions to monitor at-risk students, student academic and athletic performance. In the instance of Reg. No. 4134520, the software at issue monitors at-risk youth, just as the applied-for mark’s software services do. In the instance of Reg. No. 4676307, the software at issue monitors student performance, also as the applied-for mark’s software services do. Although applicant’s services are limited to use by academic institutions, the registered marks’ services to do have such a narrow limitation as to the channels of trade or classes of purchasers. Therefore, it is presumed that these services “travel in the same channels of trade to the same class of purchasers.” *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)).

Further, the registration(s) use(s) broader wording to describe the function of their software services and this wording is presumed to encompass all goods and/or services of the type described, including those in applicant’s more narrow identification. *See In re Jump Designs, LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006) (citing *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981)).

The applicant will note the attached copies of several third-party web sites. These sites demonstrate that applicant’s and registrants’ software services are commonly found in the same channels of trade and frequently purchased by the same consumers. For example:

- Premiere Educational Systems provides student performance software that provides similar functions to those in applicant’s software:
 - http://www.premiere4schools.com/student_management_software.html
- Tableau® software monitors student performance, generates reports, and analyzes surveys:
 - <https://www.tableau.com/solutions/education-analytics>
- Hallways4 software monitors at-risk youths in the form of students and provides data analytics:
 - <http://www.ihatepaperwork.com/hallways/support/documentation/students/atriskstudents.htm>
- Student Success Plan software is used in academic advising and monitoring at-risk youths:
 - <http://www.studentsuccessplan.org/>

The overriding concern is not only to prevent buyer confusion as to the source of the services, but to protect the registrant(s) from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant(s). TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

Accordingly, the registrants’ services and the applicant’s services are highly related for purposes of determining the likelihood of confusion by consumers. Given the similarity of the marks and the relatedness of the services, applicant’s mark must be refused.

Although applicant’s mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration. However, if applicant responds to the refusal(s), applicant should note the following advisory.

ADVISORY: POTENTIAL SECTION 2(D) REFUSAL BASED UPON PRIOR-FILED APPLICATION(S)

In addition to the above-cited marks, a mark in a prior-filed pending application(s) may present a bar to registration of applicant’s mark.

The filing date of pending U.S. Application Serial No. **86257568** precedes applicant’s filing date. See attached referenced application. The cited mark is SHINE INSIGHT for software for use by administrators for monitoring early education and development program compliance, and archiving and analyzing student information, owned by Acelero Learning Data and Technical Assistance, Inc. If the mark in the referenced application registers, applicant’s mark may be refused registration under Trademark Act Section 2(d) because of a likelihood of confusion between the two marks. *See* 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.*

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer

would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d).

Applicant may elect whether to respond to this issue at this time. In response to this Office action, applicant may present arguments in support of registration by addressing the issue of the potential conflict between applicant's mark and the mark in the referenced application. Upon receipt of applicant's response to this Office action, however, action on this application may be suspended pending final disposition of the earlier-filed referenced application(s). Applicant's election not to submit arguments at this time in no way limits applicant's right to address this issue later if a refusal under Section 2(d) issues.

RESPONSE GUIDELINES

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS – TO MAINTAIN LOWER FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE: Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. *See* 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820. TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of \$50 per international class of goods and/or services. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations, TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner's amendment by telephone without incurring this additional fee.

/Megan R. Askew/
Examining Attorney
Law Office 105
571-272-5858
megan.askew@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

Print: May 21, 2015

85382868

DESIGN MARK

Serial Number

85382868

Status

REGISTERED

Word Mark

YOUTH INSIGHT

Standard Character Mark

Yes

Registration Number

4134520

Date Registered

2012/05/01

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Terben Incorporated CORPORATION CALIFORNIA 4180 Elmer Avenue Studio
City CALIFORNIA 916023336

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Software as a service (SAAS) services, namely, hosting software for use by others for use in the aggregation of case management, education, legal, health, and other data about individual at-risk youths including foster children, youth on probation, homeless, and other youths under the care and/or supervision of local, state, or national government agencies, and provide controlled access to that data by individuals involved in the case management or care provision for those youths. First Use: 2005/05/07. First Use In Commerce: 2005/08/25.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "YOUTH" APART FROM THE MARK AS SHOWN.

Filing Date

2011/07/27

Print: May 21, 2015

85382868

Examining Attorney
SONNEBORN, TRICIA

YOUTH INSIGHT

Print: May 21, 2015

86079473

DESIGN MARK

Serial Number

86079473

Status

REGISTERED

Word Mark

CONNECT INSIGHT

Standard Character Mark

Yes

Registration Number

4676307

Date Registered

2015/01/20

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

McGraw-Hill Global Education Holdings, LLC LIMITED LIABILITY COMPANY
DELAWARE Two Penn Plaza New York NEW YORK 10121

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Providing a website featuring non-downloadable software for collecting data and creating reports for the evaluation of student performance. First Use: 2014/02/01. First Use In Commerce: 2014/02/01.

Filing Date

2013/10/01

Examining Attorney

WHITE, RICHARD

Attorney of Record

Karin Segall

CONNECT INSIGHT



Lead Generating System

- Cost Effective Approach Towards Leads?
- Get Aspiring Beauty Students?
- Attain The Competitive Edge?
- Vibrant career @ Beauty School



[Read More >>](#)



Student Management Software

Premiere Educational Systems Includes:

- Complete School Management
- Admission/Tracking of Prospects
- Satisfactory Progress Monitoring
- Anecdotal Records
 - Insert Notations on Student, Prospect or any entry Records in the entire system Financial Aid Package/Awarding
 - Download ISIR Updates instantly
 - Instant Notification of Award Status and Disbursements
 - Calculation of Need and Packaging Financial Aid Awards
 - Return to Title IV and Refund Calculations
- Outcome Performance Data
- Department of Education/Accreditation/Audit Reporting
- User Friendly
- Based on Workflows/Notifications
- User Security Setup
- Data Resides on Your Server
- Bio-Metric Time-Clock
- Targeting Reporting Capability
- Edit Checks for Audit
- Program Review Exceptions
- Local Back-ups
- Multiple Campuses- One Database

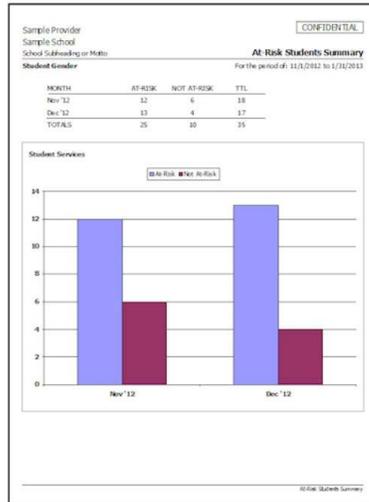


Hallways⁴ > Help & Support Center > Documentation Module > Student Reports > At-Risk Students



At-Risk Students

The At-Risk Students Summary shows the number of at-risk students who received services during the specified time period. Data is grouped by month, and is displayed both numerically and in chart form.



Hallways Modules



Quick Links

- Students Module
- Student Groups

Module Components

- Documentation Module
- Student Reports
 - Student List
 - Caseload Summary
 - Group List
 - At-Risk Students Summary
- Appointment Reports
- Resources Reports
- Accountability Reports



SSP
SOFTWARE
HAS
SUCCESSFULL
BEEN USED
FOR OVER 10

ACADEMIC ADVISING

My Academic Plan (MAP) is a tool that equips students with specific, long-range, and accurate plans for the completion of their academic goals. The MAP sets up appropriate goals and expectations for a student.

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A SUCCESSFUL COLLEGE EXPERIENCE

Technology that enables counselors to guide students to improve their academic skills and their ability to successfully navigate their world.

[Read more](#)

SSP FEATURES

SSP includes a robust set of tools and features that support integrated planning and advising. Tools and features include My Academic Plan (MAP), Early Alert, Action Plan, and more.

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STUDENT SUCCESS PLAN

Institutions seek ways to help their students meet their goals and graduate on time. Students may face obstacles in their academic and personal lives which prevent them from meeting their goals. The Student Success Plan (SSP) helps students remove these obstacles and create a clear academic pathway, positively impacting student success. Through SSP, counseling services, student services, and student support can determine student challenges and match students with the resources and courses they need to excel.

SSP is designed to improve retention, academic performance, persistence, graduation rates, and time to degree. The open source SSP case management software supports a holistic coaching and counseling model which expedites proactive interventions for students in need. Through counseling, web-based support systems, and proactive intervention techniques, targeted students are catalogued, supported, and monitored. SSP can be used with any targeted population of students, such as at-risk students or athletes.

WHAT'S NEW

September 2014
EDUCAUSE Annual Conference, Orlando, FL
Sept. 29-October 4th.

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WHO USES SSP?

STUDENTS

FACULTY AND STAFF

COACHES, COUNSELORS, AND ADVISORS

SSP is student-centric—it is a holistic model that focuses entirely on the student. Students begin by filling out the Student Intake form, populating their Student Profile. Student input helps intervention staff determine the resources the student needs to succeed. Students experience improved academic performance, time to degree, and increased graduation rates.

ABOUT SSP

- About Us
- Meet the Project Director
- Benefits
- Philosophy
- History

THE SOFTWARE

- Features
- Documentation
- Download Software

COMMUNITY

- Community Overview
- Funding
- Partners
- Supporters



DESIGN MARK

Serial Number

86257568

Status

PUBLISHED FOR OPPOSITION

Word Mark

SHINE INSIGHT

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Acelero Learning Data and Technical Assistance, Inc. CORPORATION
DELAWARE 6th Floor 63 West 125th Street New York NEW YORK 10027

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Early education and child development curriculum and assessment
computer software for administrators; student information archiving
and analysis computer software for administrators; Early education and
child development program compliance monitoring computer software for
administrators.

Filing Date

2014/04/21

Examining Attorney

FRENCH, CURTIS

Attorney of Record

Javier J. Ramos

SHINE INSIGHT

To: Symplicity Corporation (edocket@crowell.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86533567 - INSIGHT - 107363.30127
Sent: 5/21/2015 2:00:48 PM
Sent As: ECOM105@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **5/21/2015** FOR U.S. APPLICATION SERIAL NO. 86533567

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **5/21/2015** (or sooner if specified in the Office action). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

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