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

Proceeding	91223510
Party	Defendant Acelero Learning Data and Technical Assistance, Inc.
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Date	06/21/2016
Attachments	91223510 - Applicant Reply re Mtn to Compel 1st Set of Discovery Responses.pdf(301579 bytes)

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 REPLY REGARDING ITS MOTION FOR AN ORDER TO
COMPEL DISCOVERY AND MOTION TO TEST SUFFICIENCY OF
OPPOSER’S RESPONSES TO REQUESTS FOR ADMISSION**

Opposer’s response to Applicant’s motions underscores the deficiencies present in Opposer’s discovery responses prior to and after this Motion was filed. Applicant filed this Motion on May 20, 2016, prompting Opposer to attempt to correct certain deficiencies that it had to that point refused to address. And while Opposer has supplemented its various discovery responses, Opposer still has not fully complied with its discovery obligations in this Opposition. Accordingly, Applicant must request the Board to take action and compel discovery.

To be sure, after Applicant filed this Motion, Opposer supplemented its discovery responses, mooting the following points at issue in this Motion.

- (i) Opposer supplemented its responses to Interrogatory Nos. 1, 2, 4, 5, 7, 12, and 15;
- and

(ii) Opposer denied “the fact of obtaining legal opinions” relating to Request for Admission Nos. 34-41.

However, Opposer has not remedied all of the deficiencies addressed in Applicant’s Motion. Therefore, Applicant moves the Board to rule on the remaining requests for relief in this Motion based on Applicant’s initial brief and the following reply to Symplicity’s arguments.

A. Opposer Has Not Shown “Excusable Neglect” for Failing to Timely Serve Verified Interrogatories.

Opposer attempts to paint its failure to timely serve verified interrogatories as insignificant because it eventually remedied its indiscretion. But unverified interrogatory responses are not responses at all. And where excusable neglect for failing to timely file interrogatory responses is not shown, a party may be found to have forfeited its right to object to the interrogatories on their merits. *See* Opening Brief at 11. The rules of procedure exist for a reason and Opposer still fails to explain why it did not timely file its interrogatory responses. Thus, Opposer may be subject to sanctions.

At least deferred sanctions are warranted here—as requested by Applicant in this Motion—in order to ensure that Opposer does not further abuse the discovery process.

B. Opposer’s Responses to Applicant’s Document Requests Do Not Comport with the Federal Rules of Civil Procedure.

Instead of amending and correcting its deficient responses to Applicant’s document requests, Opposer tries to point the finger at Applicant’s responses. Up to the day that this Motion was filed, Opposer served only 23 documents and 234 pages of receipts on Applicant. Additionally, all financial terms were improperly redacted from Symplicity’s documents and the full-scope of Applicant’s document requests was not addressed. While document production

typically occurs in a “rolling” fashion, Opposer has displayed resistance in timely providing documents to Applicant.

To date, Opposer has not remedied its deficient “boiler-plate” responses to Applicant’s document requests. *See* Opening Brief at 12-15. What is more, in contravention of Fed. R. Civ. P. 34(b)(2)(B), Opposer still has not stated when it will complete its production of documents and things response to each of Applicant’s requests. *Id.* at 12. In contrast, Applicant, in its June 1 responses to Opposer’s document requests, affirmed that “[u]nless otherwise noted, Applicant will attempt to complete production responsive to this set of Requests by July 22, 2016.” [Exh. A at 1.] Opposer has made no such commitment on its part. Thus, Applicant requests this Board compel Opposer to complete its production responsive to Applicant’s first set of document requests within 7 days of any order arising from this Motion.

Additionally, Opposer has yet to produce a privilege log for Applicant’s inspection. Applicant reiterates its request for an order compelling Opposer to produce a privilege log within 7 days of issuance of an order arising from this Motion.

C. Opposer’s Recategorization of the Meaning of the Phrase “early education and child development curriculum and assessment” Was Not Reasonable.

Just because Opposer claims its reinterpretation of the phrase “early education and child development curriculum and assessment” is reasonable does not make it so. Instead of simply answering Applicant’s clear request for admission, Opposer substituted its own language into the response. Even assuming Applicant’s initial request was indeed unclear, Opposer’s modification did nothing to resolve any ambiguities. Instead, Opposer merely substituted language (“pre-kindergarten curriculum and assessment”) that avoided using the same language found in Applicant’s SHINE INSIGHT goods and services statements. *See* Opening Brief at 15-16.

CERTIFICATE OF SERVICE

I, Javier Ramos, do hereby certify that on June 21, 2016, I caused to be served a true and correct copy of APPLICANT'S REPLY REGARDING ITS MOTION FOR AN ORDER TO DISCOVERY AND MOTION TO TEST SUFFICIENCY OF RESPONSE TO REQUESTS FOR ADMISSION:

By E-Mail:

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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 June 21, 2016.

/Javier J. Ramos/
Javier J. Ramos

Exhibit A

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.,)	
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Opposer,)	
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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:

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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 June 1, 2016.

/Javier J. Ramos/
Javier J. Ramos